DR. AMBEDKAR: THE PRINCIPAL ARCHITECT OF THE CONSTITUTION OF INDIA

Clause wise Discussion on the Draft Constitution

SECTION FIVE
Clause-wise Discussion
16th May 1949 to 16th June 1949

Contents

Discussion on the Articles:

PART II

ARTICLE 127

The Honourable Dr. B. R. Ambedkar : Sir I move :

"That in article 127, for the word 'Parliament' the words 'each House of Parliament ' be substituted. "

It is only a formal amendment.

The amendment was adopted.

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ARTICLE 130

The Honourable Dr. B. R. Ambedkar : Sir, this article is an exact reproduction of article 42 which deals with the executive power of the Union. There is no change made at all. Word for word this article is a reproduction of

article 42. I find from the book of amendments that exactly similar amendments were tabled to article 42 and they were debated at great length. I do not think I can usefully add anything to what I said in the course of the debate on article 42 and the amendments thereon. Therefore, I submit that I am not prepared to accept any of the amendments that have been moved here.

[All the three amendments moved by Prof. K. T. Shah, Mr. Mod. Tahi and Mr. Nasiruddin Ahmad were rejected by the House.]

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ARTICLE 131

Mr. President: It is only a question of the order in which the amendments are taken. I want to dispose of the question of election first.

Shri T. T. Krishnamachari : The choice of the alternative may be left to the mover. Dr. Ambedkar may say which he proposes to move. Normally the procedure will be to move a particular article. The Chairman of the Drafting. Committee will be the person to make the choice, if you allow it to him, that will solve the problem. He might move one of the alternatives. This procedure is going to come in the way of normal procedure later on. So, I think the best thing is to leave the discretion to the mover. If you recognise Dr. Ambedkar as mover, then he may be asked to move one or other of the alternatives.

Mr. President : Is Dr. Ambedkar prepared to accept one of the other alternatives ?

The Honourable Dr. B. R. Ambedkar : Sir, I want to say a word regarding procedure to be followed. Taking the article 131, as it is, no doubt it is put in an alternative form. The two alternatives have one thing in common *viz.,* that they propose the Governor to be elected. The form of election is for the moment a subsidiary question. As against that, there are three or four amendments here which set out a principle which is completely opposed to the two alternative drafts of 131 and they suggest that the Governor should be nominated. If the amendment which proposes that the Governor should be nominated were to be accepted by the House, then both the alternatives would drop out and it will be unnecessary for the House to consider them. Therefore my suggestion would be that it would be desirable to take up No. 2010 of Mr. Gupte, and then Mr. Kamath and then No. 2015. If this matter was taken up first and the House came to the conclusion on whether the principle of appointment by the President should be accepted, then obviously there would be no purpose served in discussing article 131 in either of its alternative forms. That would be my suggestion subject to your ruling in the

matter.

Mr. President: There are several amendments which support the idea of election or appointment by President. The other amendments are regarding the method of election. First I want to get rid of the question of election so' that all amendments relating to method of election will go. Then we can take up the question of appointment and the appointment in that case will be by the President.

Shri Alladi Krishnaswami Ayyar (Madras: General): If the question of appointment or not is taken up first, that will automatically eliminate the election question. I agree with Dr. Ambedkar's views in the matter.

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The Honourable Dr. B. R. Ambedkar (Bombay : General) : Mr. President, Sir after such a prolonged debate on the amendment I think it is quite unnecessary for me to take the time of the House in making any prolonged speech. I have risen only to make two things clear; one is to state to the House the exact co-relation between the two alternatives that have been placed by the Drafting Committee before the House and amendment No. 2015 which has been debated since yesterday. My second purpose is to state the exact issue before the House, so that the House may be able to know what it is that it is called upon to bear in mind in deciding between the alternatives presented by the Drafting Committee and the new amendment.

Sir, the first alternative that has been put by the Drafting Committee is an alternative which is exactly in terms of the decision made by this House some time ago in accordance with the recommendations of a Committee appointed to decide upon the principles governing the Provincial Constitution. The Drafting Committee had no choice in the matter at all, because according to the directions given to the Drafting Committee it was bound to accept the principle which had been sanctioned by the House itself. The question, therefore, arises : why is it that the Drafting Committee thought it fit to present an alternative ? Now, the reason why the Drafting Committee presented an alternative is this. The Drafting Committee felt, as everybody in this House knows, that the Governor is not to have any kind of functions—to use a familiar phraseology, " no functions which he is required to discharge either in his discretion or in his individual judgement." According to the principles of the new Constitution he is required to follow the advice of his Ministry in all matters. Having regard to this fact it was felt whether it was desirable to impose upon the electorate the obligation to enter upon an electoral process which would cost a lot of time, a lot of trouble and I say a lot of money as well. It was also felt, nobody, knowing full well what powers he is likely to have

under the Constitution, would come forth to contest an election. We felt that the powers of the Governor were so limited, so nominal, his position so ornamental that probably very few would come forward to stand for election. That was the reason why the Drafting Committee thought that another alternative might be suggested.

It has been said in the course of the debate that the argument against election is that there would be a rivalry between the Prime Minister and the Governor, both deriving their mandate from the people at large. Speaking for myself, that was not the argument which influenced me because I do not accept that even under election there would be any kind of rivalry between the Prime Minister and the Governor, for the simple reason that the Prime Minister would be elected on the basis of policy, while the Governor could not be elected on the basis of policy, because he could have no policy, not having any power. So far as I could visualise, the election of the Governor would be on the basis of personality : is he the right sort of person by his status, by his character, by his education, by his position in the public to fill in a post of Governor ? In the case of the Prime Minister the position would be; is his programme suitable, is his programme right ? There could not therefore be any conflict even if we adopt the principle of election.

The other argument is, if we are going to have a Governor, who is purely ornamental, is it necessary to have such a functionary elected at so much cost and so much trouble ? It was because of this feeling that the Drafting Committee felt that they should suggest a second alternative. Now, so far as the course of debate has gone on in this House, the impression has been created in my mind that most speakers feel that there is a very radical and fundamental difference between the second alternative suggested by the Drafting Committee and this particular amendment. In my judgement there is no fundamental distinction between the second alternative and the amendment itself. The second alternative suggested by the Drafting Committee is also a proposal for nomination. The only thing is that there are certain qualifications, namely, that the President should nominate out of a panel elected by the provincial Legislature. But fundamentally it is a proposal for nomination. In that sense there is no vital and fundamental difference between the second alternative proposed by the Drafting Committee and the amendment which has been tabled by Mr. Brajeshwar Prasad. In other words, the choice before the House, if I may say so, is between the second alternative and the amendment. The amendment says that the nomination should be unqualified. The second alternative says that the nomination should be a qualified nomination subject to certain conditions. From a certain point of view I cannot help saying that the proposal of the Drafting Committee, namely

that it should be a qualified nomination is a better thing than simple nomination. At the same time I want to warn the House that the real issue before the House is really not nomination or election—because as I said this functionary is going to be a purely ornamental functionary; how he comes into being, whether by nomination or by some other machinery, is a purely psychological question—what would appeal most to the people—a person nominated or a person in whose nomination the Legislature has in some way participated. Beyond that, it seems to me it has no consequence. Therefore, the thing that I want to tell the House is this : that the real issue before the House is not nomination or election, but what powers you propose to give to your Governor. If the Governor is a purely constitutional Governor with no more powers than what we contemplate expressly to give him in the Act, and has no power to interfere with the internal administration of a Provincial Ministry, I personally do not see any very fundamental objection to the principle of nomination. Therefore my submission is.....

Shri Rohini Kumar Chaudhari : Can he contemplate any situation, where a Governor—whether you call him a mere symbol or not—will not have the power to form the first Ministry ? Will he not be competent to call upon any one, whether he has a big majority or a substantial minority ? And that is a very big power of which he cannot be deprived under any circumstances.

The Honourable Dr. B. R. Ambedkar : Well that power an elected or a nominated Governor will have. If he happens to call the wrong person to form a Ministry, he will soon find to his cost that he has made a wrong choice. That is not a thing that could be avoided by having an elected Governor. Such a Governor may have a friend of his choice whom he can call in to form a Ministry and that issue can be settled by the House itself by a motion of no-confidence or confidence. But that is not the aspect of the question which is material. The aspect of the question which is material is. Is the Governor going to have any power of interference in the working of a Ministry which is composed of a majority in the local Legislature ? If that Governor has no power of interference in the internal administration of a Ministry which has a majority, then it seems to me that the question whether he is nominated or elected is a wholly immaterial one. That is the way I look at it and I want to tell the House that in coming to their decision they should not bother with the more or less academic question—whether the Governor has to be nominated or to be elected—they should bear in mind this question : What are the powers with which the Governor is going to be endowed ? That matter, I submit, is not before us today. We shall take it up at a later stage when we come to the question of articles 175 and 188 and probably by amendment or the addition of some other clause which would give *him* powers. The House

should be careful and watchful of these new sections that will be placed, before them at a later stage. But today it seems to me, if the Constitution remains in principle the same as we intend that it should be, that the Governor should be a purely constitutional Governor, with no power of interference in the administration of the province, then it seems to me quite immaterial whether he is nominated or elected.

Shri L. Krishnaswami Bharathi: Is the honourable Member accepting the amendment ?

The Honourable Dr. B. R. Ambedkar : I am leaving it to the House. Mr. President: I shall then put amendment 2015 moved by Shri Brajeshwar Prasad to the vote.

The question is:

"That for article 131, the following be substituted :-~

' 131. The Governor of a State shall be appointed by the President by warrant under his hand and seal. '. "

The amendment was adopted.

Mr. President: I think after this all the other amendments to this article fall to the ground and therefore I shall put the article as amended to the vote. Article 131, as amended, was added to the Constitution.

ARTICLE 132

Mr. President : There is an amendment by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar :Sir, I move:

" That with reference to amendments Nos. 2033 and 2041 of the List of Amendments for article 132, the following article be substituted :—

' *Term of office of Governor.*—132. (1) The Governor shall hold office during the pleasure of the President.

(2) The Governor may, by writing under his hand addressed to the President, resign his office.

(3) Subject to the foregoing provisions of this article, a governor shall hold office for a term of five years from the date on which he enters upon his office :

Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office '. "

Now, Sir, this article.....

Prof. Shibban Lal Saksena : On a point of order. Amendment No. 2033 has not been moved. There is another amendment 2041, to which this is an amendment. But even that has not been moved.

Mr. President : But that has not been moved.

Shri T. T. Krishnannachari : Amendment No. 2041, stands in the name of Dr. Ambedkar.

Mr. President : Well, he may formally move it.

The Honourable Dr. B. R. Ambedkar : I have said that I am moving this in place of that amendment.

Mr. President: Dr. Ambedkar is moving No. 2041.

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The Honourable Dr. B. R. Ambedkar : Sir, the position is this : This power of removal is given to the President in general terms. What Professor Shah wants is that certain grounds should be stated in the Constitution itself for the removal of the Governor. It seems to me that when you have given the general power, you also give the power to the President to remove a Governor for corruption, for bribery, for violation of the Constitution or for any other reason which the President no doubt feels is legitimate ground for the removal of the Governor.

It seems, therefore, quite unnecessary to burden the Constitution with all these limitations stated in express terms when it is perfectly possible for the President to act upon the very same ground under the formula that the Governor shall hold office during his pleasure. I, therefore, think that it is unnecessary to categories the conditions under which the President may undertake the removal of the Governor.

[Amendment of Dr. Ambedkar as given above, wax accepted. Article 132, as amended was added to the Constitution.]

ARTICLE 134

Mr. President : We have dropped the first alternative, and we have to take the amendments only to the second alternative, and I think amendment No. 164 standing in the name of Dr. Ambedkar would cover.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

" That with reference to amendment No. 2061 of the List of Amendments, for article 134, the following he substituted :—

Qualifications for appointment an Governor.— -' No person shall he eligible for appointment as Governor unless he is a citizen of India has completed the age of thirty-five years '."

Sir, may I take it that the amendment is moved ?

Shri T. T. **Krishnamachari :** Mr. President, the Chair and the House can permit the substitution of an amendment.

Mr. President: You need not read the amendment in full.

The Honourable dr. B. R. Ambedkar : Sir, I move Amendment No. 2061, Sir, I also move that for amendment No. 2061, the following be substituted:—

" Qualification for *appointment as Governor.*--" No person shall he eligible for appointment as Governor unless he is a citizen of India has completed the age of thirty-five years.' "

[Motion was accepted. Article 134 was added to the Constitution.]

ARTICLE 135

The Honourable Dr. B. R. Ambedkar: Sir, I move :

" That in clause (1) of article 135. for the words ' either of Parliament or, ' the words of either House of Parliament or of a House ' he substituted."

This is a formal amendment.

Sir, I move:

"That in clause (1) of article 135—

(a) for the words ' member of Parliament or ' the words ' member of either House of Parliament or of a House ' be substituted,

(b) for the words ' in Parliament or such legislature as the case may be ' the words ' in that House ' be substituted."

Sir, I move:

" That in clause (2) of article 135, for the words or position of emolument ' the words ' of profit ' he substituted."

Shri H. V. Kamath : (C. **P.** Berar : General) : Mr. President, I move :

" That in clause (3) of article 135 the words " the Governor shall have an official residence, and ' he deleted. "

Mr. President : " There " also must be deleted.

Shri H. V. Kamath : " There " will remain. .....I do not know which constitution has given inspiration to Dr. Ambedkar and his colleagues of the Drafting Committee.

An Honourable Member : Irish constitution.

The Honourable Dr. B. R. Ambedkar : We have passed article 48 exactly in the same terms with reference to the President. Here, we are merely following article 48.

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(All amendments of Dr. Ambedkar were accepted. Other rejected.)

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[Article 135 as amended was adopted and added to the Constituted.}

Mr. President : There is notice of an amendment by Professor Shah suggesting the addition of a new article after article 135.

The Honourable Dr. B. R. Ambedkar : Before we go to the next

amendment I would like to suggest that in article 135, the word " elected " be dropped.

Mr. President : That is understood.

ARTICLE 136

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in article 136 for the words in the presence of the members of the Legislature of the State ' the words ' in the presence of the Chief Justice or, in his absence, any other judge of the High Court exercising jurisdiction in relation to the Stale ' be. substituted."

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Mr. President : As amendments Nos. 2107, 2108 and 2109 are not, I understand, being moved, does Dr. Ambedkar wish to make any reply to the amendments moved ?

The Honourable Dr. B. R. Ambedkar : Sir, I accept the amendment moved by Shri T. T. Krishnamachari and also the one moved by my friend Mr. Kamath.

(The amendments which were accepted by Dr. Ambedkar were as under

" That for amendment No. 2104 of the List of Amendments, the following be substituted:—

" That in article 136, for the words ' in the presence of the members of the Legislature of the State ' the words ' in the presence of the Chief Justice of the High Court exercising jurisdiction in relation to the State or, in his absence the senior-most judge of that Court available ' be substituted'."

" That for amendment No. 2106 of the List of Amendments, the following be substituted:—

" That in article 136, for the words ' I, A, B., do solemnly affirm (or swear) ' the following be substituted :—-

I, A, B., do $\frac{\text{swear in the name of God "}}{\text{solemnly affirm}}$

Pandit Hirday Nath Kunzana : (United Provinces ; General) : How does the oath read '? Is it, " I do swear in the name of God, or I do solemnly affirm. " or not ? The question is this : Some people may think that the Governor should take the in the name of God. There may however be people in this country who are atheists. (Interruption). (Mr. President read out the oath.) I see that there is an alternative. That is what I wanted to know. Nobody should be compelled to swear in the name of God if he does not want to do so.

Mr. President : No. *no.*

The question is:

"That article 136. as amended, stand part of the Constitution."

(The motion was adopted.)

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Article 136, as amended, was added to the Constitution. Assembly then adjourned till Eight of the clock on Wednesday, the

1st June, 1949.

ARTICLE 137

Mr. President: We begin with article 137 today. There is an amendment to this of which notice has been given by Mr. Brajeshwar Prasad, but that is a negative one.

(Amendment No. 2111 was not moved.)

Shri T. T. Krishnamachari (Madras : General) : This article cannot be moved in view of the decision that has been made earlier.

Shri Brajeshwar Prasad (Bihar : General) : It must be put to the vote of the House.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : It may be put to the vote.

Mr. President : None of the other amendments is going to be moved, I take it.

[Article 137 wax deleted from the Constitution]

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ARTICLE 143

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I did not think that it would have been necessary for me to speak and take part in this debate after what my friend, Mr. T. T. Krishnamachari, had said on this amendment of Mr. Kamath, but as my Friend, Pandit Kunzru, pointedly asked me the question and demanded a reply, I thought that out of courtesy I should say a few words. Sir, the main and the crucial question is, should the Governor have discretionary powers? It is that question which is the main and the principal question. After we come to some decision on this question, the other question whether the words used in the last part of clause (1) of article 143 should be retained in that article or should be transferred somewhere else could be usefully considered. The first thing, therefore, that I propose to do is to devote myself to this question which, as I said, is the crucial question.

It has been said in the course of the debate that the retention of discretionary power in the Governor is contrary to responsible government in the provinces. It has also been said that the retention of discretionary power in the Governor smells of the Government of India Act, 1935, which in the main was undemocratic. Now, speaking for myself, I have no doubt in my mind that the retention in on the vesting the Governor with certain discretionary powers is in no sense contrary to or in no sense a negation of responsible government. I do not wish to take up the point because on this point I can very well satisfy the House by reference to the provisions in the Constitution of Canada and the Constitution of Australia. I do not think anybody in this House would dispute that the Canadian system of government is not a fully responsible system of government, nor will anybody in this House challenge that the Australian Government is not a responsible form of government. Having said that, I would like to read section 55 of the Canadian Constitution.

" *Section* 55.---Where a Bill passed by the Houses of Parliament is presented to the Governor-General for the Queen's assent, he shall, according to his discretion and subject to provisions of this Act, either assent thereto in the Queen's name or withhold the Queen's assent or reserve the Bill for the signification of the Queen's pleasure."

Pandit Hirday Nath Kunzru : May I ask Dr. Ambedkar when the British North America Act was passed ?

The Honourable Dr. B. R. Ambedkar : That does not matter at all. The date of the Act does not matter.

Shri H. V. Kamath: Nearly a century ago

The Honourable Dr. B. R. Ambedkar: This is my reply. The Canadians and the Australians have not found it necessary to delete this provision even at this stage. They are quite satisfied that the retention of this provision in section 55 of the Canadian Act is fully compatible with responsible government. If they had felt that this provision was not compatible with responsible government, they have even today, as Dominions, the fullest right to abrogate this provision, They have not done so. Therefore, in reply to Pandit Kunzru, I can very well say that the Canadians and the Australians do not think that such a provision is an infringement of responsible government.

Shri Lokanath Misra (Orissa : General) : On a point of order, Sir, are we going to have the status of Canada or Australia ? Or are we going to have a Republican Constitution ?

The Honourable Dr. B. R. Ambedkar : I could not follow what he said. If, as I hope, the House is satisfied that the existence of a provision vesting a certain amount of discretion in the Governor is not incompatible or inconsistent with responsible government, there can be no dispute that the retention of this clause is desirable and, in my judgement, necessary. The

only question that arises is.....

Pandit Hirday Nath Kunzru : Well, Dr. Ambedkar has missed the point of the criticism altogether. The criticism is not that in article 175 some powers might not be given to the Governor, the criticism is against vesting the Governor with certain discretionary powers of a general nature in the article under discussion.

The Honourable Dr. B. R. Ambedkar : I think he has misread the article. I am sorry I do not have the draft Constitution with me. " Except in so far as he is by or under this Constitution, " those are the words. If the words were " except whenever he thinks that he should exercise this power of discretion against the wishes or against the advice of the ministers ", then I think the criticism made by my honourable Friend Pandit Kunzru would have been valid. The clause is a very limited clause; it says : " except in so far as he is by or under this Constitution ". Therefore, article 143 will have to be read in conjunction with such other articles which specifically reserve the power to the Governor. It is not a general clause giving the Governor power to disregard the advice of his ministers in any matter in which he finds he ought to disregard. There, I think, lies the fallacy of the argument of my honourable Friend, Pandit Kunzru.

Therefore, as I said, having stated that there is nothing incompatible with the retention of the discretionary power in the Governor in specified cases with the system of responsible Government. The only question that arises is, how should we provide for the mention of this discretionary power ? It seems to me that there are three ways by which this could be done. One way is to omit the words from article 143 as my honourable Friend, Pandit Kunzru, and others desire and to add to such articles as 175, or 188 or such other provisions which the House may hereafter introduce, vesting the Governor with the discretionary power, saying notwithstanding article 143, the Governor shall have this or that power. The other way would be to say in article 143 " that except as provided in articles so and so specifically mentioned—articles 175, 188, 200 or whatever they are ". But the point I am trying to submit to the House is that the House cannot escape from mentioning in some manner that the Governor shall have discretion.

Now the matter which seems to find some kind of favour with my honourable Friend, Pandit Kunzru and those who have spoken in the same way is that the words should be omitted from here and should be transferred somewhere else or that the specific articles should be mentioned in article 143. It seems to me that this is a mere method of drafting. There is no question of substance and no question of principle. I personally myself would be quite willing to amend the last portion of clause (1) of article 143 if I knew

at this stage what are the provisions that this Constituent Assembly proposes to make with regard to the vesting of the Governor with discretionary power. My difficulty is that we have not as yet come either to article 175 or 188 nor have we exhausted all the possibilities of other provisions being made, vesting the Governor with discretionary power. If I knew that, I would very readily agree to amend article 143 and to mention the specific article, but that cannot be done now. Therefore, my submission is that no wrong could be 'done if the words as they stand in article 143 remain as they are. They are certainly not inconsistent.

Shri H. V. Kamath : Is there no material difference between article 61 (1) relating to the President *vis-a-vis* his ministers and this article ?

The Honourable Dr. B. R. Ambedkar : Of course there is, because we do not want to vest the President with any discretionary power. Because the provincial Governments are required to work in subordination to the Central Government and therefore, in order to see that they do act in subordination to the Central Government the Governor will reserve certain things in order to give the President the opportunity to see that the rules under which the provincial Governments are supposed to act according to the Constitution or in subordination to the Central Government are observed.

Shri H. V. Kamath : Will it not be better to specify certain articles in the Constitution with regard to discretionary powers, instead of conferring general discretionary powers like this ?

The Honourable Dr. B. R. Ambedkar : I said so, that I would very readily do it. I am prepared to introduce specific articles, if I knew what are the articles which the House is going to incorporate in the Constitution regarding vesting of the discretionary powers in the Governor.

Shri H. V. Kamath : Why not hold it over ?

The Honourable Dr. B. R. Ambedkar : We can revise. This House is perfectly competent to revise article 143. If after going through the whole of it, the House feels that the better way would be to mention the articles specifically, it can do so. It is purely a logomachy.

[two amendments were rejected. Article 143 was added to the Constitution.]

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ARTICLE 144

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for clause (1) of article 144, the following be substituted :—-' 144. (1) The Chief Minister shall be appointed by the Governor and the other ministers shall he appointed by the Governor on the advice of the Chief Minister and the ministers shall hold office during the

pleasure of the Governor:

Provided that in the States of Bihar, Central Provinces and Berar and Orissa there shall be a minister in charge of tribal welfare who may in addition be in charge of welfare of the Scheduled Castes and Backward classes or any other work.

(la) The Council shall be collectively responsible to the Legislative Assembly of the state'."

Shri T. T. Krishnamachari : May I suggest that the Honourable Dr. Ambedkar might vary the wording in clause (la) of article 144 by the addition of the words " Of ministers " to the words " The Council "?

The Honourable Dr. B. R. Ambedkar : That is all right. It will bring it into line with article 62. I move that amendment.

Shri Mahavir Tyagi: May I know what is the method for the appointment of that particular Minister for Bihar and other places ? Whether the minister will be appointed by the Governor on the advice of the Chief Minister—that is clear certainly, because you say " Provided " and this means that whatever we have said before will not apply in the case of these ministers.

The Honourable Dr. B. R. Ambedkar : What it says is among the ministers appointed under clause (1) which means they are appointed by the Governor on the advice of the Chief Minister, one minister will be in charge of this portfolio.

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The Honourable Dr. B. R. Ambedkar: Mr. President, I beg to move:

" That in clause (4) of article 144, for the words ' In choosing his ministers and in his relations with them ' the words ' In the choice of his ministers and in the exercise of his other functions under the Constitution ' be substituted."

Sir, this is nothing but a verbal amendment.

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The Honourable Dr. B. R. Ambedkar : Sir, I move :

" That clause (6) of article 144 be omitted."

Shri Brajeshwar Prasad : Why ?

The Honourable Dr. B. R. Ambedkar : Because we do not want to give more discretionary powers than has been defined in certain articles, we are trying to meet you.

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Shri Jaspat Roy Kapoor: If any member has any technical objection it is another matter but this is an amendment which is acceptable to Dr. Ambedkar and most other Members whom I have consulted. There seems to be no harm

in permission being given to this. If Dr. Deshmukh is opposed to this amendment, of course he will have his say on the merits of it, and he will have an opportunity to convince the house to reject it.

Mr. President : Would that not open up discussion again '?

Dr. P. S. Deshmukh : Yes. If Dr. Ambedkar is prepared to accept it, there is another way out of it. The proviso could be separately put and if it is defeated, it will be deleted.

Mr. President : Yes, that is a way out.

The Honourable Dr. B. R. Ambedkar: I am not accepting the omission of the proviso but I am quite prepared to have the proviso transferred from this article to the Instrument of Instructions.

Pandit Thakur Das Bhargava : May I propose that this article be held over '?

The Honourable Dr. B. R. Ambedkar : Why, after having debated so long ?

Mr. President : The question is whether it should stand here or it should be transferred to the Instrument of Instructions....

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Mr. President: ...Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Mr. President, in the course of this debate on the various amendments moved I have noticed that there are only lour points which call for a reply. The first point raised in the debate is that instead of the provision that the Ministers shall hold office during pleasure it is desired that provision should be made that they shall hold office while they have the confidence of the majority of the House. Now, I have no doubt about it that it is the intention of this Constitution that the Ministry shall hold office during such time as it holds the confidence of the majority. It is on that principle that the Constitution will work. The reason .why we have not so expressly stated it is because it has not been stated in that fashion or in those terms in any of the Constitutions which lay down a parliamentary system of Government. ' During pleasure ' is always understood to mean that the ' pleasure ' shall not continue notwithstanding the fact that the Ministry has lost the confidence of the majority. The moment the Ministry has lost the confidence of the majority it is presumed that the President will exercise his ' pleasure ' in dismissing the Ministry and therefore it is unnecessary to differ from what I may say the stereotyped phraseology which is used in all responsible governments. The amendment of my Friend Prof. Saksena, substituting the words " Lower House " I am afraid, cannot be accepted, because under the provisions of the Constitution, it is open to the Prime

Minister not only to select his Ministers from the Lower, but also from the Upper House. It is not the scheme that the Minister shall be taken only from the Lower House and not from the Upper House. Consequently the provision that the Minister shall be appointed for six months, although he is not elected must be so extensive as to cover both cases, and for that reason I am unable to accept his amendment.

The third amendment which has been considerably debated was moved by my Friend Mr. Kamath and Prof. Shah. With minor amendments, they are more or less of the same tenor. In that connection, what I would like to say is this, that the House will recall that amendment No. 1332 to article 62, which is a provision analogous to article 144, was moved by Prof. Shah and was debated at considerable length. On that occasion I expressed what views I held on the subject, and it seems to me, therefore, quite unnecessary to add anything to what I have said on that occasion.

Shri H. V. Kamath : My honourable Friend Dr. Ambedkar did not accept the amendment on that occasion because in his view it was not comprehensive enough. Now it is more comprehensive.

Mr. President : You have already said all that.

The Honourable Dr. B. R. Ambedkar : The fourth point is the one which have been raised by my Friend Mr. Jaipal Singh, and to some extent by Mr. Rohini Kumar Chaudhuri. The reason why this particular clause came to be introduced in the Draft Constitution is to be found in the recommendations of the sub-committee on tribal people appointed by the Minorities Committee of the Constituent Assembly. In the report made by that committee, it will be noticed that there is an Appendix to it which is called "Statutory Recommendation ". The proviso which has been introduced in this article is the verbatim reproduction of the suggestion and the recommendation made by this particular committee. It is said there, that in the Provinces of Bihar, Central Provinces and Berar and Orissa, there shall be a separate Minister for tribal welfare, provided the Minister may hold charge simultaneously of welfare work pertaining to Schedule Castes and backward classes or any other work. Therefore, the Drafting Committee had no choice except to introduce this proviso because it was contained in that part of the report of the Tribal Committee which was headed " Statutory Recommendation ". It was the intention of this committee that this provision should appear in the Constitution itself, that it should not he relegated to any other part of it. That is why this has come from the Drafting Committee and it merely follows the recommendation of the other Committee.

With regard to the suggestion of my Friend Mr. Jaipal Singh, that Bombay should be included on account of the fact that as a result of the mergers that

have taken place into the Bombay Presidency, the number of tribal people has increased. I am sorry to say that at this stage, I cannot accept it because this is a matter on which it would be necessary to consult the Ministry of Bombay and unfortunately my Friend the Honourable Mr. Kher who was present in the Constituent Assembly during the last few days is not-here now, and I am therefore not able to accept this amendment.

Shri H. V. Kamath : With reference to my amendment, may I know if Dr. Ambedkar has realised from the view that he expressed previously—if he has recanted ?

Mr. President : I do not think that kind of cross-examination can be allowed. Now I shall take up the amendments.

There are two amendments moved by Mr. Tahir and Mr. Mohd. Ismail Nos. 2174 and 2175 which relate to this article 144, clause (1).

If Dr. Ambedkar's amendment No. 2165 is carried, probably they will drop automatically. Therefore, I would put Dr. Ambedkar's amendment to vote.

[Dr. Ambedkar's all amendments mentioned herein before were adopted, rest were negatived. Article 144, as amended was added to the Constitution.]

ARTICLE 145

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The Honourable Dr. B. R. Ambedkar : I do not think I need add anything to the debate that has taken place. All that I want to say is this : I am prepared to accept the amendment of Mr. Naziruddin Ahmad No. 2210.

Mr. President : Then I put Amendment No. 2210 which includes within itself 2211 also.

[Following amendment of Naziruddin Ahmed was accepted by Dr. Ambedkar and the House.]

" That for clauses (2) and (4) of article 145. the following be substituted :—

' (3) The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine ' ."

[Article 145, as amended was added to the Constitution.]

ARTICLE 146

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The Honourable Dr. B. R. Ambedkar (Bombay : General) : Sir, I do not accept the amendment. Article 146 is only a logical consequence of article 130. Article 130 says that the executive power of the State shall be vested in the Governor. That being so, the only logical conclusion is that all expression

of executive action must be in the name of the Governor as is provided for in article 146.

In regard to the observations made by my Honourable Friend Prof. K. T. Shah that under the old regime, all executive action was expressed in the name of the Government of India, my reply is that that was due to the fact that under the old system, the civil and military Government of India was vested not in the Governor-General, but in the Governor-General in Council, and consequently, all action had to be expressed in the name of the Government of India. Today, the position has altogether changed so far as article 130 is concerned.

[No amendment was accepted. Article 146 was added to the constitution.]

ARTICLE 147

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The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I must say that I am considerably surprised at the very excited debate which has taken place on this article 147. I should like, at the very outset, to remind the House that this article 147 is an exact reproduction of article 65 which this House has already passed. Article 65 gives the President the same power as article 147 proposes to give to the Governor. Consequently, I should have thought that all the debate that took place, when article 65 was before the House, should have sufficed for the purpose of article 147.

Shri H. V. Kamath : May I remind the Honourable Dr. Ambedkar that the President is elected and the Governor nominated..... (Interruption).

The Honourable Dr. B. R. Ambedkar: As the debate has taken place and as several Members of the House seem to think that there is something behind this article 147 which would put the position of the Ministers and of the Cabinet in the provinces in jeopardy, I propose to offer some explanation.

The first thing I would like the House to bear in mind is this. The Governor under the Constitution has no functions which he can discharge by himself; no functions at all. While he has no functions, he has certain duties to perform, and I think the House will do well to bear in mind this distinction. This article certainly, it should be borne in mind, does not confer upon the Governor the power to overrule the Ministry on any particular matter. Even under this article, the Governor is bound to accept the advice of the Ministry. That, I think, ought not to be forgotten. This article, nowhere, either in clause (a) or clause (b) or clause (c), says that the Governor in any particular circumstances may overrule the Ministry. Therefore, the criticism that has been made that this article somehow enables the Governor to interfere or to

upset the decision of the Cabinet is entirely beside the point, and completely mistaken.

Shri H. V. **Kamath :** Won't he be able to delay or obstruct..... ?

The Honourable Dr. B. R. Ambedkar : My friend will not interrupt while I am going on. At the end, he may ask any question and if I am in a position to answer, I shall answer.

A distinction has been made between the functions of the Governor and the duties which the Governor has to perform. My submission is that although the Governor has no functions still, even the constitutional Governor, that he is, has certain duties to perform. His duties, according to me, may be classified in two parts. One is, that he has to retain the Ministry in office. Because, the Ministry is to hold office during his pleasure, he has to see whether and when he should exercise his pleasure against the Ministry. The second duty winch the Governor has, and must have, is to advise the Ministry, to warn (he Ministry, to suggest to the Ministry an alternative and to ask for a reconsideration. I do not think that anybody in this House will question the fact that the Governor should have this duty cast upon him; otherwise, he would be an absolutely unnecessary functionary : no good at all. He is the representative not of a party; he is the representative of the people as a whole of the State. It is in the name of the people that he carries on the administration. He must see that the administration is carried on a level which may be regarded as good, efficient, honest administration. Therefore, having regard to these two duties which the Governor has, namely to see that the administration is kept pure, without corruption, impartial, and that the proposals enunciated by the Ministry are not contrary to the wishes of the people, and therefore to advise them, warn them and ask them to reconsider—1 ask the House, how is the Governor in a position to carry out his duties unless he has before him certain information ? I submit that he cannot discharge the constitutional functions of a Governor which I have just referred to unless he is in a position to obtain the information. Suppose, for instance, the Ministers pass a resolution,—and I know this has happened in many cases, in many provinces today,—that no paper need be sent to the Governor, how is the Governor to discharge his functions ? It is to enable the Governor to discharge his functions in respect of a good and pure administration that we propose to give the -Governor the power to call for any information. If I may say so, I think I might tell the House how the affairs are run at the Centre. So far as my information goes all cabinet papers are sent to the Governor-General. Similarly, there are what are called weekly summaries which are prepared by every Ministry of the decisions taken in each Ministry on important subjects relating to public affairs. These summaries which come

to the Cabinet, also go to the Governor-General. If, for instance, the Governor-General, on seeing the weekly summaries sent up by the departments finds that a Minister, without reference to the cabinet has taken a decision on a particular subject which he thinks is not good, is there any wrong if the Governor-General is empowered to say that this particular decision which has been taken by an individual Minister without consulting the rest of the Ministers should be reconsidered by the Cabinet ? I cannot see what harm there can be, I cannot see what sort of interference that would constitute in the administration of the affairs of the Government. I therefore, submit that the criticisms levelled against this article are based upon either a misreading of this article or upon some misconception which is in the minds of the people that this article is going to give the Governor the power to interfere in the administration. Nothing of the sort is intended and such a result I am sure will not follow from the language of the article 147. All that the article does is to place the Governor in a position to enable him to perform, what I say, not functions because he has none, but the duties which every good Governor ought to discharge. *(Cheers.)*

Shri H. V. Kamath: May I ask Dr. Ambedkar some questions ?

Mr. President : What is the use of asking question now ? You had your chance.

Shri H. V. Kamath : Dr. Ambedkar said that I could put questions at the end of his speech.

Mr. President : I do not like this practice of putting questions at the end of the discussions. All questions have been answered. I will now put the article to vote as there is no amendment to this.

Mr. **President :** The question is :

"That article 147 stand part of the Constitution. "

The motion was adopted.

Article 147 was added to the Constitution.

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ARTICLE 151

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Mr. President : 2308.—Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Sir I move:

" That in clause (2) of article 151, for the words ' third year ' the words ' second year ' be substituted. "

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The Honourable Dr. B. R. Ambedkar: The article has been passed that the Second Chamber shall he there. This article deals only with how the Members will re-elect themselves.

Prof. Shibban Lal Saksena : We have to decide whether a particular Council should live for nine years or six years, and that will depend upon the composition of the Council. The composition will determine the period at the end of which one-third of the members should retire.

Mr. President : That does not depend on the composition of the Council. Whatever may be the life of the House, the composition will be according to the decision we may take on article 150.

Prof. Shibban Lal Saksena: Well Sir, I bow to your ruling.... Then it has been said that one-third of the Council will retire every third year. I am glad Dr. Ambedkar has now proposed that the period will now be two years instead of three. That will make the life of the Council only six years which is almost equal to the life of the Assembly. It also ensures greater freshness to the Council. I therefore, support the amendment of Dr. Ambedkar.

Mr. President : Dr. Ambedkar, do you wish to say anything ?

The Honourable Dr. B. R. Ambedkar: I accept Mr. Gupte's amendment.

Mr. President : Now I shall put Mr. Gupte's amendment which has been accepted by Dr. Ambedkar, to vote. It becomes the original amendment.

The question is:

" That with reference to amendment No. 2304 of the List of Amendment, after clause (1) of article 151, the following proviso he inserted :

' Provided that the said period may, while a Proclamation of Emergency is in operation, lie extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate. ' "

The amendment was adopted.

Mr. President : Mr. Brajeshwar Prasad's amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : Then I put Dr. Ambedkar's amendment, No. 2308.

[Already mentioned.]

The amendment was adopted.

Article 151, as amended, was added to the Constitution.

ARTICLE 152

Mr. President : Then we come to article 152. To this article, there is the amendment of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for article 152, the following be substituted :—

' 152. qualifications *for membership of the State Legislative.*—A person shall not he qualified to be chosen to fill a seat ill the Legislature of a Slate unless he—

(a) is a citizen of India;

(b) is. ill the case of a seat in a Legislative Assembly, not less than twenty-five years of age and, in the case of a seat in the Legislative Council, not less than thirty-live years of age. and

(c) possesses such oilier qualifications as may be prescribed in that behalf by or under any law made by the Legislature of the Stale '."

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The Honourable Dr. B. R. Ambedkar : Sir, I accept the amendment moved by Shrimati Purnima Banerji. With regard to the tear that she expressed about clause (c) that this clause might enable the prescription of properly qualifications by Parliament for candidates, I certainly can say that such is not the intention underlying sub-clause (c). What is behind this clause is the provision of such disqualifications as bankruptcy, unsoundness of mind, residence in a particular constituency and things of that sort. Certainly there is no intention that the property qualification should be included as a necessary condition for candidates.

Then, with regard to the amendment of Professor K. T. Shah about literacy. I think that is a matter which might as well be left to the Legislatures. If the Legislatures at the time of prescribing qualifications feel that literacy qualification is a necessary one, I no doubt think that they will do it.

Sir, there is only one point about which I should like to make a specific reference. Sub-clause (c) is in a certain manner related to articles 290 and 291 which deal with electoral matters. We have not passed those articles.

If during the course of dealing with articles 290 and 291, the House comes to the conclusion that the provision contained in clause (c) should be prescribed by the law made by Parliament, then I should like to reserve for the Drafting Committee the right to reconsider the last part of sub-clause (*c).* Subject to that, I think the article, as amended, may be passed.

[Article 152 as amended was added to the Constitution.]

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ARTICLE 153

The Honourable Dr. B. R. Ambedkar: Sir, I move:

" That clause (3) of article 153 be omitted."

This clause is apparently inconsistent, with the scheme for a Constitutional Governor.

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Shri Gopal Narain : (United Provinces : General) , Mr. President, Sir, before speaking on this article, I wish to lodge a complaint and seek redress from you. I am one of those' who have attended all the meetings of this Assembly and sit from beginning to the end, but my patience has been exhausted now. I find that there are a few Honourable members of this House who have monopolised all the debates, who must speak on every article, on every amendment and every amendment to amendment. I know. Sir, that you have your own limitations and you cannot stop them under the rules, though I see from your face that you also feel sometimes bored, but you cannot stop them. I suggest to you. Sir, that some time-limit may be imposed upon some Members. They should not be allowed to speak for more than two or three minutes. So far as this article is concerned, it has already taken fifteen minutes, though there is nothing new in it, and it only provides discretionary powers to the Governor. Still a member comes and oppose it. I seek redress from you, but if you cannot do this, then you must allow us at least to sleep in our seats or do something else than sit in this House. Sir, I support this article.

Mr. President : I am afraid I am helpless in this matter. I leave it to the good sense of the Members.

Shri Brajeshwar Prasad: (Rose to speak).

Mr. President : Do you wish to speak after this ? *(Laughter)*

The Honourable Dr. B. R. Ambedkar :I do not think I need reply.

This matter has been debated quite often.

[Except Dr. Ambedkar's amendment, none else was accepted. Article 153 wax added to the Constitution.]

ARTICLE 153-A

Mr. President: Does any one wish to say anything about this amendment ?

The Honourable Dr. B. R. Ambedkar: Sir, I do not accept the amendment.

[The amendment of Prof. K. T. Shah was negatived and Article 154 was added to the Constitution.]

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ARTICLE 160

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Mr. President: Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: I have nothing to say. .Article 160 was adopted and added to the Constitution.

NEW ARTICLE 163-A

Mr. President : There is the new article 163-A which has to be moved. That is amendment No. 39 List 1.

The Honourable Dr. B. R. Ambedkar : Sir, it has to be held over.

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ARTICLE 165

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Shri T. T. Krishnamachari : The Chair has *on* previous occasions permitted Dr. Ambedkar to move such amendments, and I think the same practice may be continued and it may be moved formally.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

" That in article 165 fur the words ' a declaration ' the words ' an affirmation or oath ' he .substituted. "

The motion was adopted.

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ARTICLE 166

The Honourable Dr. B. R. Ambedkar: Sir, I move:

" That after clause (1) of article 166, the following new clause *be* inserted :—

' (la) No person shall be a member of the Legislature of two or more States and if a person is chosen a Legislatures of the Legislatures of two or more States, then at the expiration of such period as may he specified in rules made by the President that person's seat ill the Legislatures of all the States shall become vacant, unless he has previously resigned his seat in the Legislatures of all but one of the States '. "

This is a clause which provides for a case where a person is a member of the Legislatures of two States; the former clause dealt with a person who is a member of the Legislature of a State and of Parliament.

Mr. President : There is the amendment of Mr. Naziruddin Ahmad, No. 2403, hut that is covered by the one now moved. No. 2404.

The Honourable Dr. B. R. Ambedkar: I move:

" That clause (2) of article 166 he deleted."

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Mr. President: I shall put the amendments moved by Dr. Ambedkar, one by one.

Shri H. V. **Kamath :** Will not Dr. Ambedkar answer the point raised by me ?

The Honourable Dr. B. R. Ambedkar: I do not consider it necessary.

[All amendments by Dr. Ambedkar mentioned herein before wen' accepted. Article 166, wax added to the Constitution.]

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ARTICLE 167

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The Honourable Dr. B. R. Ambedkar: Sir, I move:

" That for sub-clause (1) of article 167, the following be substituted :— '

(d) if he has ceased to be a citizen of India or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State '."

Shri Mahavir Tyagi: What will he our position in regard to England, now that we are in the Commonwealth ? Will our allegiance to the King he also a disqualification ?

Mr. President : That is a matter of interpretation of the Constitution.

The Honourable Dr. B. R. Ambedkar : That will he dealt with by the Nationality Act. (Amendments Nos. 2420 to 2423 were not moved.)

Shri H. V. Kamath : I think my amendment No. 2424 is a purely verbal amendment and I leave it to the Drafting Committee.

Mr. President: I think it is of a substantial nature.

Shri H. V. Kamath: If that be so, I will move it.

I move:

"That in sub-clause (d) of clause (1) of article 167, after the semi-colon at the end, the word ' or ' he added."

...Whether the word 'and' is deleted, or in its place 'or' is substituted, more or less comes to the same thing, according to my untrained mind. That is why I said I leave it to the wise men of the drafting Committee, because I am a mere novice in these matters. I thought ' or ' would he more appropriate, because if any one of these disqualifications arises—if a person disqualified for any of these reasons—then the article will apply.

Mr. President: Dr. Ambedkar might consider it.

Shri H. V. Kamath : As **I** said, I leave the decision to the wise men of the drafting committee.

The Honourable Dr. B. R. Ambedkar : I think it is perfectly all right. Sir.

Mr. President : Won't they read cumulatively ?

Honourable Dr. B. R. Ambedkar : No, Sir, they won't read cumulatively.

Mr. President : If ' or ' is added it will put it beyond all doubt.

The Honourable Dr. B. R. Ambedkar : **I** do not think it necessary.

(Amendments Nos. 2425, 2426 and 2427 were not moved.)

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The Honourable Dr. B. R. Ambedkar : I rise only for the sake of my Friend. Mr. Tyagi, as lie has asked me one or two pointed questions. As he himself says that he is an illiterate, I can very well understand his difficulty in understanding the word ' adherence '. I would therefore explain to him what the word ' adherence ' means. When one country is invaded by another country, what happens is this that the local people either out of fear or out of martial law sometimes give obedience to the laws made by the military governor who acts in the name of the invading country. Such a conduct is often excused while the invasion continues and the military occupation continues. It often happens that when there is no real necessity to obey the invader or the military governor, either because there has been a relaxation of control or because the hostility has ceased, certain people still continue to render obedience to the military governor or the invader. Their conduct under law is referred to as ' adherence '. It is distinct from acknowledging. It is to protect this kind of case that the word ' adherence ' has been used.

Mr. Friend, Mr. Tyagi, was also very much agitated over the question of who are to be regarded as foreign countries. I am sure about it that it is not the intention of my Friend, Mr. Tyagi, to involve me in any discussion about Commonwealth relationship which is a matter which has already been discussed and disposed of in the House, but I would like to tell him that I propose to introduce an amendment to article 303, sub-clause (1), to define what would be regarded as foreign country, and if my friend, Mr. Tyagi has got Volume II of the printed List of amendments, he will see what the proposed amendment is. The proposed amendment gives power to the President to declare what are not foreign countries, and that declaration would govern whether a particular country is or is not a foreign country. For the benefit of my Friend, Mr. Tyagi, I would also like to add one word of explanation. Many people seem to he rather worried that when a country is declared not to he a foreign country under the proposed amendment, or the Commonwealth Agreement, all such people who are inhabitants of those countries would *ipso facto* acquire all the rights of citizenship which are being conferred by this Constitution upon the people of this country. I want to tell my friends that no such consequence need follow. The position under commonwealth relationship would be this; In all the dominion countries, the residents would be divided into three categories, citizens, aliens and a third category of what may be called Dominion residents residing in a particular country. All that would mean is this, that the citizens of the dominions residing

in India would not be treated as aliens, they would have some rights which aliens would not have, but they would certainly not be entitled, in my judgement, to get the full rights of citizenship which we would be giving to the, people of our country. I hope my friend, Mr. Tyagi, has got something which will remove the doubts which he has in his mind.

Shri Mahavir Tyagi : I heartily thank you for the interesting speech that you have made.

[The amendments moved by Dr. Ambedkar and that of Shri T. T.Krishnamachari were carried. Article 167, wax accordingly added to the Constitution.]

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ARTICLE 169

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The Honourable Dr. B. R. Ambedkar : (Bombay : General) : Sir, not very long ago this very matter was debated in this House, when we were discussing the privileges of Parliament and I thought that as the House had accepted the article dealing with the privileges and immunities of Parliament, no further debate would follow when we were really reproducing the very same provision with regard to the State legislature. But as the debate has been raised and as my Friend Mr. Kamath said that even the press is agitated, I think it is desirable that I should state what exactly is the reason for the course adopted by the Drafting Committee, especially as when the debate took place last time I did not intervene in order to make the position clear.

I do not know how many Members really have a conception of what is meant by privilege. Now the privileges, which we think of, fall into two different classes. There are first of all, the privileges belonging to individual members, such as for instance freedom of speech, immunity from arrest while discharging their duty. But that is not the whole thing covered by privilege.

Dr. P. S. Deshmukh: We do not want any enumeration of the privileges or any lecture on how they are exercised. What we want to know is whether it is not possible to embody them into the Constitution. That is the real question.

Mr. President: He is dealing with the matter.

The Honourable Dr. B. R. Ambedkar: I am mentioning the difficulty. If we were only concerned with these two filings, namely freedom of speech and immunity from arrest, these matters could have been very easily mentioned in the article itself and we would have had no occasion to refer to the House of Commons. But the privileges' which we speak of in relation to Parliament are much wider than the two privileges mentioned and which relate to individual members. The privileges of Parliament extends, for instance, to the rights of

Parliament as against the public. Secondly, they also extend to right as against the individual members. For instance, under the House of Commons' powers and privileges it is open to Parliament to convict any citizen for contempt of Parliament and when such privilege is exercised the jurisdiction of the court is ousted. That is an important privilege. Then again, it is open to Parliament to take action against any individual member of Parliament for anything that has been done by him which brings Parliament into disgrace. These are very grave matters—e.g., to commit to prison. The right to lock up a citizen for what Parliament regards as contempt of itself is not an easy matter to define. Nor is it easy to say what are the acts and deeds of individual members which bring Parliament into disrepute.

Pandit Thakur Das Bhargava: We are only concerned with the privileges of members and not with the privileges of Parliament.

The Honourable Dr. B. R. Ambedkar : Let me proceed. It is not easy, as I said, to define what are the acts and deeds which may be deemed to bring Parliament into disgrace. That would require a considerable amount of discussion and examination. That is one reason why we did not think of enumerating these privileges and immunities.

But there is not the slightest doubt in my mind and I am sure also in the mind of the Drafting Committee that Parliament must have certain privileges, when that Parliament would he so much exposed to calumny, to unjustified criticism that the parliamentary institution in this country might be brought down to utter contempt and may lose all the respect which parliamentary institutions should have from the citizens for whose benefit they operate.

I have referred to one difficulty why it has not been possible to categorise. Now I should mention some other difficulties which we have felt.

It seems to me, if the proposition was accepted that the Act itself should enumerate the privileges of Parliament, we would have to follow three courses. One is to adopt them in the Constitution, namely to set out in detail the privileges and immunities of Parliament and its members. I have very carefully gone over May's Parliamentary Practice which is the source book of knowledge with regard to the immunities and privileges of Parliament. I have gone over the index to May's Parliamentary Practice and I have noticed that practically 8 or 9 columns of the index are devoted to the privileges and immunities of Parliament. So that if you were to enact a complete code of the privileges and immunities of Parliament based upon what May has to say on this subject, I have not the least doubt in my mind that we will have to add not less than twenty or twenty-live pages relating to immunities and privileges of Parliament. I do not know whether the members of this House would like to have such a large categorical statement of privileges and immunities of

Parliament extending over twenty or twenty-live pages. That I think is one reason why we did not adopt that course.

The other course is to say, as has been said in many places in the Constitution, that Parliament may make provision with regard to a particular matter and until Parliament makes that provision the existing position would stand. That is the second course which we could have adopted. We could have said that Parliament may decline the privileges and immunities of the members and of the body itself, and until (hat happens the privileges existing on the date on which the Constitution comes into existence shall continue to operate. But unfortunately for us, as Honourable Members will know, the 1935 Act conferred no privileges and no immunities on Parliament and its members. All that it provided for was a single provision that there shall he freedom of speech and no member shall he prosecuted for anything said in the debate inside Parliament. Consequently that course was not open, because the existing Parliament or Legislative Assembly possesses no privilege and no immunity. Therefore we could not resort to that course.

The third course open to us was the one which we have followed, namely, that the privileges of Parliament shall be the privileges of the House of Commons. It seems to me that except for the sentimental objection to the reference to the House of Commons I cannot see that there is any substance in the argument that has been advanced against the course adopted by the Drafting Committee. I therefore suggest that the article has adopted the only possible way of doing it and there is no other alternative way open to us. That being so, I suggest that this article be adopted in the way in which we have drafted it.

Dr. P. S. Deshmukh: The honourable Member has said nothing about my other suggestion.

The Honourable Dr. B. R. Ambedkar : As **I** said, if you want to categorise and set out in detail all the privileges and immunities it will take not less than twenty-five pages.....

Mr. President : Dr. Deshmukh's suggestion was that in this article which deals with the legislatures of the States we might only say that the members of a State legislature will have the same privileges as Members of our Parliament.

The Honourable Dr. B. R. Ambedkar: That .is only a drafting suggestion. For instance, it can he said that most of the articles we are adopting for the State Legislatures are more or less the same articles which we have adopted for the Parliament at the centre. We might as well say that in most of the other cases the same provisions will apply to the State Legislature but as we have not adopted that course, it would be rather odd to adopt it in this particular

case.

Mr. President : I shall first put the amendment of Mr. Jaspat Roy Kapoor to the House.

"That in clause (4) *of* article 169..after the words 'a House of the Legislature of a Stale the words ' or any committee thereof ' he inserted. "

The amendment was adopted.

Article 169, as amended, was added to the constitution.

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ARTICLE 170

Shri L. Krishnaswami Bharathi (Madras : General) : Sir, I beg to move:

" That in article 170, after the words ' so made ' the words ' salaries and ' he inserted."

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Mr. Naziruddin Ahmad : We have not had notice that article 109 will be taken up today.

The Honourable Dr. B. R. Ambedkar: What does it matter

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ARTICLE 109

The Honourable Dr. B. R. Ambedkar: Mr. President, Sir, I move:

" That in article 109 for the words ' if in so far as ' the words ' if and in so far as ' he substituted. "

(Amendments Nos. 1896 and 1897 were not moved.)

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The Honourable Dr. B. R. Ambedkar: I do not think it is necessary to say anything. I accept Mr. T. T. Krishnamachari's amendment

(The amendment was as under) :—

" That for the proviso to article 109, the following be substituted :— '

Provided that the said jurisdiction shall not extend to a dispute to which any State is a party, if the dispute arises out of any provision of a treaty agreement, engagement, sanad or other similar instrument which provides that the said jurisdiction shall not extend to such dispute."

[The amendment was adopted along with that of Dr. Ambedkar as shown earlier.]

Article 109, as amended, was added to the Constitution.

ARTICLE 110

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Mr. President : Does No. 111 cover cases of criminal nature also ?

Mr. Naziruddin Ahmad : No.

The Honourable Dr. B. R. Ambedkar : We are making provision for that by a separate article.

Mr. Naziruddin Ahmad : I am very grateful to you Sir, for pointing out that article 111 does not make any provision for criminal case.....

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The Honourable Dr. B. R. Ambedkar: I move :

" That in clause (3) of article 110, for the words ' not only on the ground that any such question as aforesaid has been wrongly decided, but also, the words on the ground that any such question as aforesaid has been wrongly decided and with the leave of the Supreme Court,' he substituted."

The existing language is somewhat awkward and that is the reason why we are putting it in a different way so that it may read without any difficulty. The clause now will read as follows :—

" Where such a certificate is given, or such leave is granted, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided, and with the leave of the Supreme Court, on any other ground."

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The Honourable Dr. B. R. Ambedkar : Sir, I cannot help saying that the debate has really gone off the track and the Members have really wandered far away from the immediate point raised by my Friend Mr. Naziruddin Ahmed in Ms amendments Nos. 1904 and 1907. All that is before us is amendment No. 1904. According to that amendment what my friend Mr. Naziruddin Ahmed wants to do is to suggest that the last few words of sub-clause (1) of article 110, namely the words as to the interpretation of this Constitution should be deleted. I am sorry I was not able to hear exactly the grounds which he urged for the deletion of the phrase ' as to' the interpretation of this Constitution '. Although I tried hard to catch his very words, all that I could hear him say as the reason for moving amendment No. 1904 was that he felt that those words were words of limitation, and that if those words remained there would be no provision for an appeal to the Supreme Court in cases where a question of constitutional law did not arise.

Mr. Naziruddin Ahmad: I believe I am right.

The Honourable Dr. B. R. Ambedkar : No question of certificate arises.

Mr. Naziruddin Ahmad: You wanted to delete that yesterday.

The Honourable Dr. B. R. Ambedkar: I think my honourable Friend Mr. Naziruddin Ahmad has probably not grasped the scheme of the articles which deal with the Supreme Court.

Mr. Naziruddin Ahmad: That is your stock argument.

The Honourable Dr. B. R. Ambedkar: We have in this Draft Constitution made separate provision for appeal in cases where questions of constitutional law arise, and cases where no such question arises. Appeals where constitutional points arise are provided for in article 110. Questions where Constitutional law are not involved are provided for in article III.. The reason why this separation is made between the two sorts of appeals is also probably not realised by my Friend Mr. Naziruddin Ahmed. I should therefore like to make that point clear. There is going to come an amendment to article 121 which deals with the rules to be made by the Supreme Court. I have tabled an amendment to clause (2) of article 121 which says that wherever an appeal comes before the Supreme Court and it involves questions of Constitutional law, the minimum number of judges, which would sit to hear such a case shall be five, while in other cases of appeals where no question of Constitutional law arises, we have left the matter to the Supreme Court to constitute the Bench and define the number of judges who would be required to sit on it by rules made there under. Now that is an important distinction, namely, that a Constitutional matter coming before the Supreme Court will he decided by a number of judges not less than five, while other cases of appeals may be decided by such number of judges as may be prescribed by rule. My friend therefore will understand that the existence of the words ' as to the interpretation of this Constitution ' does not in any way debar appeals other than those in which Constitutional law is involved, and he will also understand why we propose to put these two types of appeals in two separate articles, the number of judges being different in the two cases.

Now I come to the other point which has been debated at great length, namely, whether the Supreme Court should have criminal jurisdiction or not. As I said, so far as article 110 is concerned and the amendment moved by my Friend Mr. Naziruddin Ahmad is concerned, all this debate is absolutely irrelevant and beside the point and really ought not to influence our decision so far as article 110 is concerned. But in as much as a great deal of debate has taken place, I would like to say a few words. Members will Find that there is provision in article 110 for a criminal matter coming before the Supreme Court if that matter involves a question of Constitutional law. Therefore that is one of the ways by which criminal matters may come up and the criminal matters that may come up under article 110 may be very small matters.

Again, there is article 112 where the jurisdiction of the Privy Council has

been vested in the Supreme Court. For the moment I would like to draw the attention of honourable Members to the words ' decree or final order in any case or matter whether civil or criminal ' so that the Supreme Court may, by special leave, draw to itself even a criminal matter under the provisions of article 112.1 have noticed that there is considerable feeling among criminal lawyers that there ought to be a provision.....

Pandit Lakshmi Kanta Maitra: Practising criminal law.

The Honourable Dr. B. R. Ambedkar: I am sorry, ' practising criminal law ', that just as article I I I confers upon the Supreme Court powers of hearing civil appeals, civil only, there ought to be a conferment of power upon the Supreme Court to hear criminal appeals, if not all appeals, at least appeals of a limited character such as involving death sentences. Now, I do not want to say that there is no force in the argument that has been used in support of this plea that the Supreme Court should have criminal jurisdiction but the question is how is it to be done *'!* Should we do it by a specific clause in the Constitution itself that in the following matter there shall be right to appeal to the Supreme Court, or should we permit Parliament to confer criminal jurisdiction of an appellate sort upon the Supreme Court ? I am office opinion for the moment—1 do not wish to dogmatise nor do I wish to say anything positive at this stage; I have an open mind although, if I may say so, it is not an empty mind—that it might be enough at this stage to confer upon Parliament the power to vest the Supreme Court with jurisdiction in matters of criminal appeals. Parliament may then, after due consideration, after investigation, after finding out how much work there will be for the Supreme Court if it is conferred jurisdiction in criminal matters and how much work it will be possible for the Supreme Court to handle, having regard to the number of judges that the finances of this country could provide to cope with that work— I think it would be much better to leave it to Parliament because this is a matter which would certainly require some kind of statistical investigation. My other view is that rather than have a provision for conferring appellate power upon the Supreme Court to whom appeals in cases of death sentence can made, I would much rather support the abolition of the death sentence, itself. *(Hear, hear.)* That, I think, is the proper course to follow, so that it will end this controversy. After all, this country by and large believes in the principle of non-violence. It has been its ancient tradition, and although people may not be following it in actual practice, they certainly adhere to the principle of non-violence as a moral mandate which they ought to observe as far as they possibly can and I think that, having regard to this fact, the proper thing for this country to do is to abolish the death sentence altogether.

Pandit Lakshmi Kanta Maitra: All the criminal courts also.

The Honourable Dr. B. R. Ambedkar : I think we ought to confine ourselves to the amendment moved to article 110 and the amendments moved by my Friend Mr. Naziruddin Ahmed.

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[Following amendments were adopted.]

(1) "That in clause (1) of article 110, for the word ' State ' the words ' the territory of India ' he substituted."

(2) "That in clause (3) of article 110, for the words ' not only on the ground that any such question as aforesaid has been wrongly decided, hut also, ' the words ' on the ground that any such question as aforesaid has been wrongly decided and with the leave of the Supreme Court ' be substituted."

[Article 110, (is amended, was added to the Constitution.]

ARTICLE 111

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That with reference to amendments Nos. 1916 to 1919 of the List of Amendments, in sub-clause (a) of clause (1) of article III. after the words ' twenty thousand rupees ', the words ' or such other sum as may be specified in this behalf by Parliament by law, ' be inserted."

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The Honourable Dr. B. R. Ambedkar: Sir, I beg to move:

"That to clause (1) of article III the following proviso be added :—-

" Provided that no appeal shall lie to the Supreme Court from the judgement, decree or order of one Judge of a High Court or of one Judge of a Division Court thereof, or of two or more Judges of a High Court, or of a Division Court constituted by two or more Judges of a High Court, where such Judges are equally divided in opinion and do not amount in number to a majority of the whole of the Judges of the High Court at the time being.' "

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The Honourable Dr. B. R. Ambedkar (Bombay : General) : Sir, I move:

"That in clause (2) of article III, for the words ' the case involves a substantial question of law as to the interpretation of this Constitution which has been wrongly decided ', the words ' a substantial question of law as to the interpretation of the Constitution has been wrongly decided ' be substituted."

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The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That with reference to amendments Nos. 1916 to 1919 of the List of Amendments, in sub-clause (a) of clause (1) of article III, after the words ' twenty thousand rupees ' the words ' or such other sum as may be specified in this behalf by Parliament by law ' he inserted."

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The Honourable Dr. B. R. Ambedkar: Sir, I would begin by reminding the House as to exactly the point which the House is required to consider and decide upon. The point is involved between two amendments : one is the amendment moved by my Friend Prof. Shibban Lal Saksena, which is in a sense an exudation of amendment 1911 and my own amendment, which is amendment No. 25 in List No. I of the Fourth Week. Before I actually deal with the point that is raised by these two amendments, I should like to make one or two general observations.

The first observation that I propose to make is this. Article III is an exact reproduction of sections 109 and 110 of the Civil Procedure Code. There is, except for the amendments which I am suggesting, no difference whatsoever between article 111 and the two sections in the Civil Procedure Code. The House will therefore remember that so far as article I II is concerned, it does not in any material or radical sense alter the position with regard to appeals from the High Court. The position is exactly as it is stated in the two sections of the Civil Procedure Code.

The second observation that I would like to make is this. Sections 109 and 110 of the Civil Procedure Code are again a reproduction of the powers conferred by paragraph 39 of the Letters Patent by which the different High Courts in the Presidency Towns were constituted by the King. There again. Sections 109 and 110 are a mere reproduction of what is contained in paragraph 39.

The third point that I should like to make is this : that these Letters Patent were instituted or issued in the year 1862. These Letters Patent also contain a power for the Legislature to alter the powers given by the Letters Patent. But although this power existed right from the very beginning when the Letters Patent were issued in the year 1865, the Central Legislature, or the Provincial Legislatures, have not thought fit in any way to alter the powers of appeal from the decree, final order or judgement of the High Court. Therefore, the House will realise that these sections which deal with the right of appeal from the final order, decree and judgement of the High court have history extending over practically 75 to 80 years. They have remained absolutely undisturbed. Consequently, in my judgement, it would require a very powerful argument in support of a plea that we should now, while enacting a provision for the constitution of the Supreme Court, disturb a position which has stood

the test of time for such a long period.

It seems to me that not very long ago, this House sitting in another capacity as a Legislative Assembly, had been insisting that these powers which under the Government of India Act were exercised by the Privy Council, should forthwith, immediately, without any kind of diminution or denudation be conferred upon the Federal Court. It therefore seems to me somewhat odd that when we have constituted a Supreme Court, which is to take the place of the Federal Court, and when we have an opportunity of transferring powers of the Privy Council to the Supreme Court, a position should have been taken that these provisions should not be reproduced in the form in which they exist today. As I say, that seems to me somewhat odd. Therefore, my first point is this that there is no substantial, no material, change at all. We are merely reproducing the position as between the High Court and the Privy Council and establishing them as between the High Court and the Supreme Court.

Now, Sir, I will come to the exact amendments of which I made mention in the opening of my speech, namely. Prof. Shibban Lal Saksena's amendment and my amendment No. 25. If my amendment went through, the result would be this : that the Supreme Court would continue to be a Court' of Appeal and Parliament would not be able to reduce its position as a Court of Appeal, although it may have the power to reduce the number of appeals, or the nature of appeals that may go to the Supreme Court. In any case, sub-clause (c) of article 111 would remain intact and beyond the power of Parliament. My view is that although we may leave it to Parliament to decide the monetary value of cases which may go to the Privy Council, the last part of clause (1) of article 111, which is (c), ought to remain as it is and Parliament should not have power to dabble with it because it really is a matter not so much of law as a matter of inherent jurisdiction. If the High Court, for reasons which are patent to any lawyer does certify that notwithstanding that the cause of the matter involved in any particular case does not fall within (a) and (b) by reason of the fact that the property qualification is less than what is prescribed there, nonetheless it is a cause or a matter which ought to go to the Supreme Court by reason of the fact that the point involved in it does not merely affect the particular litigants who appear before the Supreme Court, but as a matter which affects the generality of the public, I think it is a jurisdiction which ought to be inherent in the High Court itself and I therefore think that clause (c) should not be placed within the purview of the power of Parliament.

On the other hand if the amendment moved by my friend Prof. Saksena were to go trough, two things will happen. One thing that will happen has already been referred to by my friend Bakshi Tek Chand that Parliament may altogether take away the Appellate jurisdiction of the Supreme Court in civil

matters. It seems to me that that would be a disastrous consequence. To establish a Supreme Court in this country and to allow any authority in Parliament to denude and to take away completely all the powers of appeal from the Supreme Court would be to my mind a very mendacious thing. We might ourselves take courage in our own hands and say that the Supreme Court shall not function as a court of appeal in civil matters and confine it to the same position which has been given to the Federal Court.

The other thing will be that Parliament would be in a position to take away sub-clause (c) which, as I said, ought to remain there permanently, because it is really a matter of inherent jurisdiction. Therefore it seems to me that the plea that the appellate power of the Supreme Court should be made elastic is completely satisfied by ,my amendment No. 25, because under my amendment it would be open to Parliament to regulate the provisions contained in (a) and (b) without in any way taking away the appellate jurisdiction of the Supreme Court completely or without affecting the provisions contained in (c). Sir, I therefore oppose Mr. Saksena's amendment.

[In all 4 amendments were adopted, one was rejected. Article III, as amended, was added to the Constitution.]

ARTICLE 112

The Honourable Dr. B. R. Ambedkar: I do not think there is anything for me to say.

Mr. President : The question is :

" That in article 112, the words ' except the States for the time being specified, in Part III of the First Schedule, in cases where the provisions of article 110 or article 111 of this Constitution do not apply ' be deleted."

The amendment was adopted.

Article 112, as amended, was added to the Constitution.

NEW ARTICLE 112-A

Mr. President : There is notice of a new article to be moved by Dr. Ambedkar, amendment No. 191.

The Honourable Dr. B. R. Ambedkar: Sir, I beg to move:

" That with reference to amendment No. 1932 of the List of Amendments, after article 112, the following new article be inserted:—

(Review of judgements or orders passed by the Supreme Court)

' 112-A Subject to the provisions of any law made by Parliament or any rule made under article 121 of this

Constitution, the Supreme Court shall have power to review any judgement pronounced or order passed by it.' "

Sir, the draft Constitution, as it stands now.....

Prof. Shibban Lal Saksena : On a point of order, Sir, amendment No. 1932 has not been moved.....

Mr. President: That has not been moved: I am taking this as a fresh article.

Shri T. T. Krishnamachari : May I mention, Sir, that amendment No. 1932 is exactly the same as amendment No. 1928 ? Actually, if amendment 1928 is moved, amendment 1932 cannot be moved.

Mr. President : I have already said that I have taken it as a fresh article.

The Honourable Dr. B. R. Ambedkar: The Draft Constitution contains no provision for review of its judgements. It was felt that that was a great lacuna and this new article proposes to confer that power upon the Supreme Court.

The Honourable Shri K. Santhanam (Madras : General): Sir, I am afraid that the drafting of this is not quite as happy as it should be. For one thing, I do not think it is right to put an article in the Constitution giving a power to the Supreme Court and say that that power shall be limited by rules made by the Supreme Court. I think it is bad law. Parliament has no right to interfere even with its ordinary power of review.

Mr. President: This refers to its own decisions.

The Honourable Shri K. Santhanam : I am coming to that. I think there is a greater reason why the Supreme Court should be left unfettered to review its own judgement. In these two respects, the thing is rather defective. I would suggest to Dr. Ambedkar to see if it should go in this form or whether the form should not be reconsidered.

The Honourable Dr. B. R. Ambedkar: I think my friend Mr. Santhanam is completely mistaken in the observations that he has made. First of all, we are not conferring any power to the Supreme Court to make any rules. That power is being delegated by article 121. If he refers to that article, he will see that it reads thus :

" Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time with the approval of the President, make rules for regulating generally the practice and procedure of the Court including, etc., etc. "

Therefore it is not correct to say that we are giving power to the Supreme Court. The power is with the Supreme Court and is to be exercised with the approval of President. Another thing which has misled Mr. Santhanam is that he has not adverted to the fact that I proposed by amendment 42 in List I to

add one more clause to article 121 which is (bb) and which deals with the rules to be made with regard to review. Therefore, having regard to these two circumstances, it is necessary that the review power of the Supreme Court must be made subject both to article 121 and also the amendment contained in No. 42.

[Article 112-A wax adopted and added to the Constitution]

ARTICLE 113

Mr. President : No. 113.

Shri T. T. Krishnamachari: The house has expressly excluded reference to State in Part III of the First Schedule all along and therefore this article may not be necessary. You can formally put it to the House so that the House can negative it.

The Honourable Dr. B. R. Ambedkar: That is so.

[Article 113 was deleted from the Constitution.]

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ARTICLE 114

Mr. President : Article 114. There is one amendment by Mr. Gupte.

(The amendment was not moved.)

" Does anyone wish to speak ?

The Honourable Dr. B. R. Ambedkar: My attention has been drawn by my friend Shri Alladi Krishnaswami Ayyar that the articles of this Draft Constitution dealing with powers of the Supreme Court do not expressly provide for appeals in income-tax cases. I wish to say that I am considering the matter and if on examination it is found that none of the articles could be used for the purpose of conferring such an authority upon the Supreme Court, I propose adding a special article dealing with that matter specifically. But this article may go in.

[Article 114 was added to the Constitution.]

ARTICLE 121

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for clause (3) of article 121, the following be substituted :—

' (3) No judgement shall be delivered by the Supreme Court save in open court, and no report shall be made under article 119 of this Constitution save in accordance with an opinion also delivered in open court.' "

Sir, I shall move also amendment No. 1966 :

"That for clause (4) of article 121, the following be substituted :—

' (4) No judgement and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the judges present at the hearing of the case but nothing in this clause shall be deemed to prevent a judge who does not concur from delivering a dissenting judgement or opinion.' "

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The Honourable Dr. B. R. Ambedkar: Mr. President, I regret very much that I cannot accept the amendment moved by my Honourable Friend Mr. Lari. It seems to me that he has completely misunderstood what is involved in his amendment.

The reason why it is necessary to make the rule- making power of the Supreme Court subject to the approval of the President is because the rules may, if they were left entirely to the Supreme Court, impose a considerable burden upon the revenues of the country. For instance, supposing a rule was made that a certain matter should be heard by two Judges. That may be a simple rule made by the Supreme Court. But, undoubtedly, it would involve a burden on public revenues. There are similar provisions in the rules, for instance, regarding the regulation of fees. It is again a matter of public revenue. It could not be left to the Supreme Court. Therefore, my submission is that the provisions contained in article 121 that the rules should be subject to the approval of the President is the proper procedure to follow. Because, a matter like this which imposes a burden upon the public revenues and which burden must be financed by the legislature and the Executive by the imposition of taxation could not be taken away out of the purview of the Executive.

I may also point out that the provisions contained in article 121 are the same as the provisions contained in article 214 of the Government of India Act, 1935 relating to the Federal Court and article 224 relating to the High Courts. Therefore, there is really no departure from the position as it exists today. With regard to the comments made by my Honourable Friend, Mr. Santhanam relating to amendment No. 42 moved by Honourable Friend. Mr. T. T. Krishnamachari, I am afraid, I have not been able to grasp exactly the point that lie was making. All that, therefore, I can say is this, that this matter will be looked into by the Drafting Committee when it sits to revise the Constitution, and if any new phraseology is suggested, which is consistent with the provisions in the article which we have passed conferring power of review by the Supreme Court, no doubt it will be considered.

There is one other point to which I would like to refer and that is amendment

No. 43. In amendment No. 43, which has been moved by my Honourable Friend, Shri Alladi Krishnaswami Ayyar, and to which I accord my wholehearted support, there is a proviso which says that if a question about the interpretation of the Constitution arises in a matter other than the one provided in article 110, the appeal shall be referred to a Bench of five judges and if the question is disposed of it will be referred back again to the original bench. In the proviso as enacted, a reference is made to article III, but I quite see that if the House at a later stage decides to confer jurisdiction to entertain criminal appeals, this proviso will have to be extended so as to permit the Supreme Court to entertain an appeal of this sort even in a matter arising in a criminal case. I, therefore, submit that this proviso also will have to be extended in case the House follows the suggestion that has been made in various quarters that the Supreme Court should have criminal jurisdiction.

[5 amendments including 2 of Dr. Ambedkar were adopted. One wax negatived. Article 121 as amended was added to the Constitution.]

ARTICLE 191

The Honourable Dr. B. R. Ambedkar: Sir, I formally move.

"That in sub-clause (a) of clause (1) of article 191, for the words ' the High Court of East Punjab, and the Chief Court in Oudh ' the words ' and the High Courts of East Punjab, Assam and Orissa ' be substituted."

Sir, I move:

" That with reference to amendments Nos. 2567 and 2570 of the List of Amendments, for article 191, the following article he substituted:—

' 191. (1) There shall be a High Court for each State.

(2) For the purposes of this Constitution the High Court existing in any Province immediately before the commencement of this Constitution shall be deemed to be the High Court for the corresponding State.

High Courts for State

(3) The provisions of this Chapter shall apply to every High Court referred to this article'."

Shri T. T. Krishnamachari : We might take up the discussion of this amendment first because if this is accepted by the House all the other amendments will be unnecessary. This alters the entire contour of the article while, it also simplifies it.

Mr. President : There are some amendments of which I have got notice, I shall run over them and see.

(Amendments Nos. 2568 *to* 2577 were not moved.)

Mr. President : There is therefore no other amendment except the one moved by Dr. Ambedkar. Does anyone wish to say anything about the amendment or the article ?

The amendment was adopted.

[Article 191, as amended, wan added to the Constitution.]

ARTICLE 192

(Amendments 2578 to 2580 were not moved.)

Mr. President : Amendment No. 2581 is in Dr. Ambedkar's name. This has to be formally moved.

The Honourable Dr. B. R. Ambedkar: Sir, I formally move:

" That in the proviso to article 192. the words beginning with 'together with any ' and ending with ' of this chapter ' be deleted, and after the word ' six ' the words 'from time to time ' he inserted." Sir, I move:

" That with reference to amendment No. 2581, of the List of Amendments, for article 192, the following new articles be substituted:— (High Courts of Record).

' 192. Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

(Constitution of High Court).

' 192-A. Every High Court shall consist *of a* chief Justice and such other judges as the President may from time to time deem it necessary to appoint:

' Provided that the judges so appointed shall at no time exceed in number such maximum at the President may, from time to time, by order fix in relation to that Court.' "

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ARTICLE 193

Mr. President : We were dealing with article 193 yesterday. We shall now resume consideration of that article. One amendment was moved but there are several other amendment. There is another amendment No. 2592 which is in the name of Dr. Ambedkar which, I think, will cover all these amendments except about the question of age. So I think that if Dr. Ambedkar moves his amendment first, probably it may not be necessary to take up these other amendments with regard to matters other than the age. With regard to the age, we may take up that question separately.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : I am not moving that amendment.

Mr. President : Then we shall have to take up the other amendments.

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The Honourable Dr. B. R. Ambedkar: Mr. President, Sir, I move:

"That with reference to amendment No. 2610 of the List of amendments, in clause *(c)* of the proviso to clause (1) of article 193, after the words ' High Court ' the words ' in any State for the tune being specified in the first Schedule ' be inserted."

Sir, the object of this amendment is to remove all distinctions between provinces and Indian States so that there may be complete interchangeability between the incumbents of the different High Courts.

Sir, I formally move amendment No. 2614 in the List of Amendment.

" That in sub-clause *(a)* of clause (2) of article 193 for the word ' State ' the words ' State for the time being specified in the first Schedule ' be substituted."

Sir, **I** move:

"That with reference to amendment No. 2614 of the List of amendments, in sub-clause *(u)* of clause (2) of article 193 the words ' in any State in or for which there is a High Court ' the words ' in the territory of India ' be substituted."

"That with reference to amendment No. 2614 of the List of amendments, in sub-clause *(h)* of clause (2) (if article 193, after the words ' High Court ' the words ' in any State for the time being specified in the First Schedule ' be inserted."

"That with reference to amendment No. 2614 of the List of the amendments, in sub-clause *(b)* of Explanation I to clause (2) of article 193, for the words ' in a State for the time being specified in Part I or Part II of the First Schedule ' the words in the territory of India ' he substituted."

"That with reference to amendment No. 2614 of the List of Amendments, in clause *(h)* of Explanation I to clause (2) of article 193 for the words ' British India ' the word ' India ' he substituted."

"That with reference to amendment no. 2622....."

Mr. President: Before moving that, you may formally move amendment No. 2622.

The Honourable Dr. B. R. Ambedkar: Sir, I formally move:

" That for Explanation II to clause (2) of article 193, the following he substituted:—

' Explanation II.- In sub-clauses (a) and *(h)* of this clause, the expression ' High Court ' with reference to a State for the time being specified in Part III of the First Schedule means a Court which the President has under article 123 declared to be a High Court for the purposes of articles 103 and 106 of this constitution.' "

Sir, I move:

" That with reference to amendment No. 2622 of the List of amendments, Explanation II to

clause (2) of article 193 be omitted."

The object of all these amendments 196 to 200 is to remove all (Distinctions between British India and the Indian Slates. Some of the amendments particularly amendments 199 and 200 are merely consequential upon the main amendment.

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Mr. President: Dr. Ambedkar, do you wish to speak on this ?

The Honourable Dr. B. R. Ambedkar : No, Sir. I do not think that any reply is called for.

[Only 4 amendments were adopted. Rest were rejected. Article 193, ax amended, was added to the Constitution.]

ARTICLE 193-A

Mr. President : Dr. Ambedkar, do you wish to say anything about Prof. Shah's motion *'!*

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I regret that I cannot accept this amendment by Prof. Shah. if I understood Prof. Shah correctly, he said that the underlying object of his amendment was to secure or rather give effect to the theory of separation between the judiciary and the executive. I do not think there is any dispute that there should be separation between the Executive and the Judiciary and in fact all the articles relating to the High Court as well as the Supreme Court have prominently kept that object in mind. But the question that arises is this : how is this going to bring about a separation of the judiciary and the executive. So far as I understand the doctrine of the separation of the judiciary from the executive, it means that while a person is holding a judicial office he must not old any post which involves executive power; similarly, while a person is holding an executive office he must not simultaneously hold a judicial office. But this amendment deals with quite a different proposition so far as I am able to see it. It lays down what office a person who has been a member of the judiciary shall hold after he has put in a certain number of years in the service of the judiciary. That raises quite a different problem in my judgement. It raises the same problem which we might consider in regard to the Public Service Commission, as to whether a Member of the Public Service Commission after having served his term of office should be entitled to any office thereafter or not. It seems to me that the position of the members of the judiciary stands on a different footing from that of the Members of the Public Service Commission. The Members of the Public Service Commission are, as I said on an earlier

occasion, intimately connected with the executive with regard to appointments to Administrative Services. The judiciary to a very large extent is not concerned with the executive : it is concerned with the adjudication of the rights of the people and to some extent of the rights of the Government of India and the Units as such. To a large extent it would be concerned in my judgement with the rights of the people themselves in which the government of the day can hardly have any interests at all. Consequently the opportunity for the executive to influence the judiciary is very small and it seems to me that purely for a theoretical reason to disqualify people from holding other offices is to carry the things too far. We must remember that the provisions that we are making for our judiciary are not, from the point of view of the persons holding the office, of a very satisfactory character. We are asking them to quit office at sixty while in England a person now can hold office up to seventy years. It must also be remembered that in the United States practically an office in the Supreme Court is a life tenure, so that the question of a person seeking another office after retirement can very seldom arise either in the United Stales or in Great Britain.

Similarly, in the United States, so far as pension is concerned, the pension of a Supreme Court Judge is the same as his salary : there is no distinction whatsoever between the two. In England also pension, so far as I understand, is something like seventy or eighty per cent. of the salary which the Judges get. Our rules, as I said, regarding retirement impose a burden upon a man inasmuch as they require him to retire at sixty. Our rules of pension are again so stringent that we provide practically a very meagre pension. Having regard to these circumstances I think the amendment proposed by Prof. K. T. Shah is both unnecessary for the purpose he has in mind, namely of securing separation of the judiciary from the executive, and also from the point of view that it places too many burdens on the members who accept a post in the judiciary.

Shri H. V. Kamath: May I say that this amendment applies not to retired Judges but to Judges serving on the bench at the moment ?

The Honourable Dr. B. R. Ambedkar: If **I** may say so, the amendment seems to be very confused. It says that it shall apply to a person who has served " for a period of live years continuously ". That means if the President appointed a Judge for less than five years he would not be subject to this; which would defeat the very purpose that Prof. K. T. Shah has in mind. It would perfectly be open to the President in any particular case to appoint a Judge for a short period of less than five years and reward him by any post such as that *of* Ambassador or Consul or Trade Commissioner, etc. The whole thing seems to me quite ill-conceived.

Mr. President : The question is :

"That the following new article 193-A after article 193 he added:

' 193-A. No one who has been a Judge of the Supreme Court, or of the Federal Court or of any High Court for a period of 5 years continuously shall he appointed to any executive office under the Government of India or the Government of any State in the Union, including the office of an Ambassador, Minister, Plenipotentiary, High Commissioner, Trade Commissioner, Consul, as well as of a Minister in the Government of India or under the Government of any State in the Union '."

[This amendment of Prof. K. T. Shah was negatived.]

ARTICLE 195

The Honourable Dr. B. R. Ambedkar: I move :

" That in article 195 for the words ' a declaration ' the words ' an affirmation or oath ' he substituted."

It is a very formal amendment.

The amendment was adopted.

Article 195, as amended, was added to the Constitution.

ARTICLE 196

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for article 196, the following article be substituted:

(Prohibition of practising in courts or before any authority by a person who held office as a judge of a High Court).

' 196. No person who has held office as a judge of a High Court after the commencement of this Constitution shall plead or act in any court or before any authority within the territory of India' ."

It is simply a rewording of the same.

Shri Prabhu Dayal Himatsingka: In view of the amendment moved by Dr. Ambedkar now, my amendment (No. 2632) is not necessary.

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Mr. President: Dr. Ambedkar do you wish to say anything ?

The Honourable Dr. B. R. Ambedkar: **I** do not think anything is necessary.

Mr. President : I will first put Sardar Hukam Singh's amendment to the vote. If that is accepted. Dr. Ambedkar's amendment will stand amended by this.

[The amendment was negatived. Dr. Ambedkar's amendment was adopted. Article

196, as amended, was added to the Constitution.]

ARTICLE 196-A

(Amendment No. 2639 was not moved)

Mr. President: A similar amendment, No. 1870 was moved and discussed at great length and it was held over.

The Honourable Dr, B. R. Ambedkar : I suggest that article 196-A may be held over. A similar article, (No. 103-A) was held over.

Mr. President : I agree. This article will then stand over.

ARTICLE 197

The Honourable Dr. B. R. Ambedkar : Article 197 also may be held over.
Mr. President : I agree, this article also is held over.

ARTICLE 198

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for article 198, the following article be substituted:— (Temporary appointment of acting Chief Justice).

> "198- When the office of Chief Justice of a High court is vacant or when any such Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office the duties of the office shall he performed by such one of the other judges of the court, as the President, may appoint for the purpose'."

Shri T. T. Krishnamachari : Sir, amendment No. 2650 is covered by the amendment moved by **Dr.** Ambedkar, because it relates to clause (2).

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ARTICLE 200

Dr. Ambedkar's amendment is substantially the same; it deletes clause (2) and only retains clause (1).

Dr. P. K. Sen : I do not want to move that amendment. (Amendments Nos. 2651, 2652 and 2653 were not moved.) *[The motion of Dr. Ambedkar was adopted. Article 198 as amended was added to the Constitution.]*

Mr. President : There is amendment No. 201 of which notice has been given by Dr. Ambedkar which is exactly the same as the amendment moved by Mr. Jaspat Roy Kapoor. That amendment need not be moved.

The Honourable Dr. B. R. Ambedkar: Sir, I move: " That in article 200. the

words ' subject to the provisions of this article ' he omitted."

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The Honourable Dr. B. R. Ambedkar : Sir, I did not think that this article would give rise to such a prolonged debate, in view of the fact that a similar article has been passed with regard to the Supreme Court. However, as the debate has taken place and certain Members have asked me certain definite questions, I am here to reply to them.

My Friend Mr. Kamath said that he did not know whether there was any precedent in any other country for article 200. I am sure he has not read the Draft Constitution, because the foot-note itself says that a similar provision exists in America and in Great Britain. (Inaudible interruption by Mr. Kamath). in fact, if I may say so; article 200 is word for word taken from section 8 of the Supreme Court of Judicature Act in England. There is no difference in language at all. That is my answer, so far as precedent is concerned.

But, Sir, apart from precedent, I think there is every ground for the provision of an article like article 200. As the House will recall we have now eliminated altogether any provision for the appointment of temporary or additional judges, and those clauses which referred to temporary or additional judges have been eliminated from Constitution. All judges of the High Court shall have to be permanent. It seems to me that if you are not going to have any temporary or additional judges you must make some kind of provision for the disposal of certain business, for which it may not be feasible to appoint a temporary judge in time to discharge the duties of a High Court Judge with respect to such matters. And therefore the only other provision which would be compatible with article 196 (which requires that no judge after retirement shall practise) is the provision which is contained in article 200. As my Friend Dr. Tek Chand said, there seems to be a lot of misgiving or misunderstanding with regard to the purpose or the intention of the article. It is certainly not the intention of the article to import by the back door for any length of time persons who have retired from the High Courts. Therefore nobody need have any misgiving with regard to this.

The other question that has been asked of me is with regard to the proviso. Many people who have spoken on the proviso have said that it appeared to them to be purposeless and meaningless. I do not agree with them. I do think that the proviso is absolutely necessary. If the proviso is not there it would be quite open for the authorities concerned to impose a sort of penalty upon a judge who refuses to accept the invitation. It may also happen that a person who refuses to accept the invitation may be held up for contempt of Court. We do not want such penalties to be created against a retired High Court Judge

who either for the reason that he is ill, incapacitated or because he is otherwise engaged in his private business does not think it possible to accept the invitation extended to him by the Chief Justice. That is the justification for the proviso. The other question that has been asked is whether the word ' privilege ' in article 2(X) will entitle a retired judge to demand the full salary which a judge of the High Court would be entitled to get. My reply to that is that this is a matter which will be governed by rules with regard to pension. The existing rule is that when a retired person is invited to accept any particular job under Government he gets the salary of the post *minus* the pension. I believe that is the general rule. I may be mistaken. Anyhow, that is a matter which is governed by the Pension Rules. Similarly this matter may be left to be governed by the rules regarding pension and we need not specifically say anything about it with regard to this matter in the article itself. This is all I have to say with regard to the points of criticism that have been raised in the course of the debate.

Shri H. V. Kamath : Is there such a provision in the Constitution of the United States ?

The Honourable Dr. B. R. Ambedkar: I have not got the text before me. In the United States the question does not arise because the salary and pension are more or less the same.

I am prepared to accept amendment No. 89 of Mr. Kapoor, because some people have the feeling that article 200 is likely to be abused by the Chief Justice inviting more than once a friend of his who is a retired judge. I therefore am prepared to accept the proposal of Mr. Kapoor that the invitation should be extended only after the concurrence of the President has been asked for.

Shri Jaspat Roy Kapoor : May I know whether it is the intention that the interpretation of the term ' privileges ' should be left to the Parliament ?

The Honourable Dr. R. R. Ambedkar : It may have to be defined. There is no doubt about it that Parliament will have to pass what may be called a Judiciary Act governing both the Supreme Court and the High Courts and in that. the word ' privilege ' may be determined and defined.

Shri Jaspat Roy Kapoor: But the privileges will be the same in the case of a judge who has been called back and that of the permanent judges. That is what article 200 lays down.

The Honourable Dr. B. R. Ambedkar : Yes, but privilege does not mean full salary. Mr. **President:** Amendment No. 89 moved by Mr. Jaspat Roy Kapoor has been accepted by **Dr.** Ambedkar. I will now put it to vote.

" That in article 200 after the words ' at any time ', the words ' with the previous consent of the Prescient ' he inserted."

The amendment was adopted.

[Dr. Ambedkar's original amendment was also adopted and article 200 as amended, was added to the Constitution.]

ARTICLE 202

Dr. Bakshi Tek Chand : ...I hope the amendment which I have moved will be accepted by Dr. Ambedkar and that the article, as amended, will be passed by the House.

Mr. President : Dr. Ambedkar, do you wish to move amendment No. 2663 ?

The Honourable Dr. B. R. Ambedkar: No. Sir, I accept bakshi Tek Chand's amendment. I do not think that any reply is necessary.

Shri H. V. Kamath : There has been an amendment to substitute " or " for " and ".

The Honourable Dr. B. R. Ambedkar : There is no difference as to the substance of the article.

Shri H. V. Kamath: It makes a difference as to the meaning.

(Amendment by Dr. Bakshi Tek Chand.)

" That with reference to amendment No. 2661 of the list of Amendments, in clause (1) of article 202, for the words ' or orders in the nature of the writs ' the words ' orders or writs including writs in the nature ' he substituted. "

The amendment was adopted.

[Article 202, as amended, was added to the Constitution.]

ARTICLE 203

The Honourable Dr. B. R. Ambedkar: Sir, I wish that article 203 be held over.

Mr. President : Article 203 is held over.

ARTICLE 204

The Honourable Dr. B. R. Ambedkar: Sir, I move:

" That the explanation to article 204 be omitted."

Sir, it is unnecessary.

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Mr. Tajmal Hussain : .. .The amendment moved by Dr. Ambedkar is perfectly correct. I support that amendment.

Mr. President : I want to dispose of this article before we rise. It is already

twelve.

The Honourable Dr. B. R. Ambedkar: I am afraid I have to go to a Cabinet Meeting at 12 o'clock.

Mr. President : Then I do not think there is much to be said either against or for the amendment. All that could be said has been said. No more speeches.

The Honourable Dr. B. R. Ambedkar: With regard to the observations made by my Friend Mr. Bharathi.

Shri H. V. Kamath : Sir, you have called upon me to speak. I shall not take more than 2 or 3 minutes. Shall I speak now or tomorrow ?

Mr. President: Tomorrow.

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Mr. President : We shall now take up the discussion of article 204.

The Honourable Dr. B. R. Ambedkar (Bombay : General) Sir, I would like to move an amendment to article 204, I mentioned that I would have to consider the position; I have since considered it and I would like to move the amendment. Sir, with your permission I move :

> " That with reference to amendment No. 2674 of the List of Amendments, for article 204 the following article he substituted: (Transfer of certain cases to High Court.)
>
> ' 204. If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may—
>
> (a) either dispose of the case itself, or
>
> (b) determine the said question of law and return the case to the court from which the case has been so withdrawn together with a copy of its judgement on such question, and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgement'."

That is the amendment. If you like. Sir, I will speak something about it now. But I would rather reserve my remarks to the end to save time instead of speaking twice.

Mr. President : Just as you please.

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The Honourable Dr. B. R. Ambedkar : Sir, I do not think any very long discussion is necessary to come to a decision on the amendment I have

moved. The House Will remember when we were dealing yesterday with article 204 my Friend Mr. Bharathi raised a question which related to the last sentence in article 204, viz., that the High Court shall withdraw the case to itself and dispose of the same. The question which Mr. Bharathi put, which I thought was a very relevant one, was this. Why should the High Court be required to withdraw the whole case and dispose of it, when all that the main part of article 204 required was that it should deal with a substantial question of law as to the interpretation of the Constitution ? His position was that in a suit many questions might be involved. One of them might be a question involving a substantial question of law as to the interpretation of this Constitution. The other questions may be questions as to the interpretation of ordinary law made by Parliament. If there was a case of this sort which was a mixed case, containing an issue relating to the interpretation of the Constitution and other issues relating to the interpretation of the ordinary law while it may be right for the High Court to possess the power to decide and pronounce upon the question relating to the interpretation of law, why should the High Court be required *to* withdraw the whole case and decide not merely upon the issue relating to the interpretation of the Constitution but also upon other issues relating to the interpretation of ordinary law ? As I said, that was a very pertinent question the force *of* which I did feel when I heard his argument and I therefore asked your permission to allow this article to be kept hack.

Now, if I may say so, a similar question was raised by my Friend Shri Alladi Krishnaswami Ayyar when we were dealing with article 121, which also dealt with appeals to the Supreme Court in cases which were of a mixed type, namely, cases where there was a question of constitutional law along with questions of the interpretation of ordinary law made by Parliament. According to the original draft it was provided that in all cases where there was an issue relating to the interpretation of the constitutional law, such an appeal should be decided by a Bench of five Judges. The question that was raised by Shri Alladi Krishnaswami Ayyar was that a party may, quite wickedly so to say—for the purpose of getting the benefit of a bench of five—raise in his grounds of appeal a question relating to the interpretation of constitutional law which ultimately might be found to be a bogus one having no substance in it. Why should five Judges of the Supreme Court waste their time in dealing with an appeal where as a matter of fact there was no question of the interpretation of constitutional law ? The House will remember that his argument was accepted and accordingly, if the House has got papers containing the Fourth Week's Amendment List No. I, Amendment 43, they will find that we then introduced a proviso which said that in a case of this sort where an appeal

comes from a High Court involving not necessarily the question of the interpretation of law but involving other questions, the appeal should go to an ordinary bench constituted under the rules made by the Supreme Court which may, I do not know, be a Bench of either two Judges or three Judge's. If after hearing the appeal that particular Bench certifies that there is as a matter of fact a substantial question of the interpretation of the Constitution, then and then alone the appeal-may be referred to a bench of five Judges. Even then the Bench of the five Judges to which such an appeal would be referred would decide only the constitutional issue and not the other issues. After deciding constitutional issues the Judges would direct that the case be sent back to the original bench of the Supreme Court consisting either of two or three Judges to dispose of the same.

My first submission is this, that in making this amendment to article 204 which I have moved this morning we are doing no more than carrying out the substance of the proviso to clause (2a) of article 121 contained in amendment No. 42. Here also what we say is this : that the High Court, if satisfied, may take the case to itself, decide the issue on constitutional law and send back the case to the subordinate Judge for the disposal of other issues involving the interpretation of ordinary law made by Parliament. I do not think we are making anything new, novel, strange or extraordinary as compared to what we have done with regard to the Supreme Court. Therefore my submission is this that if we accept, as we have accepted, the proviso to clause (2a) of article 121, the House cannot be making any very grave mistake or any very grave departure.....

Shri Alladi Krishnaswami Ayyar : On a point of explanation, Sir, I shall feel obliged if is your view that there is no distinction between a point arising in the appellate stage and a point arising when the case is pending in the court of first instance.

The Honourable Dr. B. R. Ambedkar : I am only dealing with the general framework of the amendment. My submission is that the amendment I have moved is exactly on a par with the proviso that we have added to clause (2a) of article 121. Therefore my submission is that there is no very grave departure from what we have already done.

Then two questions have been raised. One is with regard to the use of the word ' judgement '. It has been said that the word ' judgement ' has been differently interpreted and that the party whose case has been withdrawn by the High Court for the purposes of determining the constitutional issue may not be in a position to approach the supreme Court, because under article 110 we have said that an appeal to the Supreme Court shall lie only from the judgement or the final order of the High Court. The contention is that the

judgement may not be regarded as a judgement within the meaning of article 110 or may not be regarded as a final order. Well, having used the word ' judgement ' in article 110 in that particular sense, namely a decision from which an appeal would lie to the Supreme Court, I do not personally understood why the use of word ' judgement ' in this amendment should not be capable of the same interpretation. But if the contention is correct I think the matter could be easily rectified by using the word ' decision ' instead of ' judgement ' and adding an explanation such as this that " the decision shall be regarded as a final order for the purpose of article 110 ". I do not think that that difficulty is insuperable.

With regard to the question of appeal it would certainly be open to the party whose case has been withdrawn to do what it likes. Once the judgement has been delivered by the High Court, in a case which has been withdrawn for the purpose of decision of the issue regarding the interpretation of the Constitution, it may straightway go to the Supreme Court and have that question finally decided, or it may wait until all issues have been decided by the subordinate Judge, an appeal has gone through the High Court on findings of fact with regard to those particular issues and thereafter take the matter to the Supreme Court. We do not bind the party to any of the procedure if the issue regarding the interpretation of the Constitution is on the same footing as what we may call a preliminary issue so that when a decision is taken it will be a decision of the whole case. I have no doubt about it that the party affected will, rather than proceed with the rest of the case before the subordinate Judge, go immediately to the Supreme Court and have an interpretation of the Constitution. I see no difficulty at all in this.

Now, the other question that was raised was this : my Friend Shri Alladi Krishnaswami Ayyar said something sitting there. I could not hear him. But in private conversation he mentioned that it may be very difficult for a High Court to make a severance between an issue relating to the interpretation of the Constitution and the other issues and it may be that for the interpretation of the other issues and for the interpretation of the issue relating to the interpretation of the Constitution the High Court may have to consider other issues as well. It was also suggested that supposing the case was really a small one, but did involve the question of interpretation of law, why should the High Court be not permitted to dispose of such a small case rather than have it sent back to the subordinate court '? Well, in order to meet both these contingencies, the amendment gives the power to the High Court to dispose of the case itself. I do not think that that would not be found sufficient for the difficulties which have been pointed out. I therefore submit that the amendment does carry out the intentions we have, namely, that the High

Court should not be encumbered with a decision of all the issues when it considers the whole case; it may be left free to decide a particular issue with regard to the specific question of the interpretation of the Constitution.

May I say one more thing ? There is no doubt a power under the Civil Procedure Code contained in section 24 permitting the High Court to withdraw any case to itself and determine it. But the difficulty with section 24 is that if the High Court decides upon withdrawal it shall have to withdraw the whole case. It has no power of partial withdrawal, while our object is that the High Court should be permitted to withdraw that part of the case which refers to the interpretation of the Constitution. My submission, therefore, is that unless you provide specifically as we are doing now under article 204, the High Court will have to withdraw the whole case to itself if it wants to decide the question of the interpretation of this Constitution.

I would like to say one thing more. You will remember that there was no time between yesterday and this morning to apply all that close attention to the wording of this particular amendment which I have moved. I am therefore moving this amendment because I think it is very wrong to keep on holding up article after article because of certain minor defects or discrepancies. I should like to say that while I move this amendment I would like to have an opportunity given to the Drafting Committee to make such changes as it may deem necessary in order to remove the defects that have been mentioned if there are any, and bring it into line with the other articles which the assembly has passed.

Mr. President : I will now put the amendment of Professor Shah No. 2674 to vote.

Mr. H. V. Kamath : I thought Dr. Ambedkar's amendment superseded this amendment.

The Honourable Dr. B. R. Ambedkar : I am substituting the entire article. You may withdraw amendment No. 2674.

Mr. President: Your amendment is for substituting the whole article. I will then put your amendment to vote.

The question is :—

" That for article 204, the following article be substituted :—(Transfer of certain cases of High Courts).

> ' 204. If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may—

(a) either dispose of the case itself, or

(b) determine the said question of law return to case to the court from which the case has been so withdrawn together with a copy of its judgement on such question, and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgement. ' "

The amendment was adopted.

Mr. President : Now This becomes the original article. It disposes of all the amendment moved.

The question is :—

" That article 204, as amended, stand part of the Constitution. "

The motion was adopted.

Article 204, as amended, was added to the Constitution.

[Dr. Ambedkar's amendment was carried. Article 204, as amended, was added to the Constitution.]

ARTICLE 205

Mr. President : The House will now consider article 205. There is an amendment to this by Dr. Ambedkar, No. 2676.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

" That for article 205, the following be substituted :—(Officers & servants & the expenses of High Courts).

'205. (1) Appointments of officers and servants of a High court shall be made by the Chief Justice of the Court or such other judge or officer of the Court as he may direct :

Provided that the Governor of the State in which the High Court has its principal seat may by rule require that in such cases as may be specified in the rule, no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public service Commission.

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall he .such as may be prescribed by rules made by the Chief Justice of the Court or by some other judge or officer of the Court authorised by the Chief Justice to make rules for the purpose:

Provided that the salaries, allowance and pensions payable to or in respect of such officers and servants shall be fixed by the Chief Justice of the Court in consultation with the Governor *of* the State in which the High Court has its principal seat.

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court and the salaries and allowances of the Judges of the Court, shall be charged upon the revenues of the State, and any fees or other moneys taken by the Court shall form part of those revenues.' "

Mr. President : There is an amendment by Mr. Kapoor.

The Honourable Dr. B. R. Ambedkar : Sir, I have an amendment to this amendment. If you will allow me I will move it. It is on page 3 of List II.

Mr. President : You can move it.

The Honourable Dr. B. R. Ambedkar: Sir I move:

" That with reference to amendment No. 2676 of the List of Amendments, for the proviso to clause (2) of the proposed article 205, the following proviso be substituted:—

' Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State in which the High Court has its principal seat'."

Sir, these provisions are exactly the same as the provisions for the Supreme Court.

Mr. President: That covers your amendment, Mr. Kapoor.

Shri Jaspat Roy Kapoor (United Provinces : General) : Yes, Sir, it obviates the necessity for moving my amendment.

[Dr. Ambedkar's amendment was adopted. Article 205, as amended, was added to the Constitution.]

ARTICLE 206

The Honourable Dr. B. R. Ambedkar : Sir, I move that this article be deleted.

Article 206 was deleted from the Constitution.

ARTICLE 90— *Contd.*

The Honourable Dr. B. R. Ambedkar : Sir, I would request you now to take the financial article. We may go back to article 90 which was under discussion.

Mr. President: We had a number of amendments to this article which were moved that day before we adjourned discussion. They are amendments Nos. 3, 4 and 6 standing in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

" That for sub-.clauses (c) and (d) of clause (1) of article 90, the following sub-clauses he substituted:

' (c) the custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such fund;

(d) the appropriation of moneys out of the Consolidated Fund of India; ' "

Sir, Amendment No. 4 is covered by amendment No. 3 and so I am not

moving it.

Sir, I also move :

"That in sub-clauses (e) and (f) of clause (1) of article 90, for the words 'revenues of India ', the words 'Consolidated Fund of India ' be substituted."

Sir, Amendment No. 5 standing in the name of Pandit Kunzru is also covered and therefore, it is necessary.

Sir, with your permission, I would like at this stage to make a short introductory speech in order to give the House an idea of some of the changes which are not covered by the specific amendments which I have moved just now, but which relate to the changes that have been made in the financial procedure to be observed with regard to financial matters.

The changes that we have made by the various amendments that I have proposed to move in connection with this matter are these. The first change that has been made is that there shall be no taxation without law. If any levy is to be made upon the people, the sanction must be that of law. That is provided for in article 248 which will come at a later stage. In order to give the House a complete idea of what we are doing, I mention the matter now. There was no such provision in the existing Draft Constitution. The second thing which is proposed to be done is to introduce the idea of what is called a Consolidated Fund. That will be done by the new article 248-A which will come at a later stage. We also wish to provide for the establishment of a Contingency Fund which Parliament may want to establish. That will be done by the new article 248-B.

I do not think that any explanation is necessary for the first provision, namely, that there should be no tax except by law. It is a very salutary-provision and the executive should not have any power of levy upon the people unless they obtain the sanction of Parliament. With regard to the Consolidated Fund, it is really in a sense not a new idea at all; it is merely a new wording. The existing wording is " Public Account of the Governor General of India." If Honourable Members will refer to a volume called the Compilation of Treasury Rules, Volume I, they will find that the Public Account is also referred to as the Consolidated Fund. I shall read the definition. " Public Account of the Central Government means the Consolidated Fund into which moneys received on account of the revenues of the Governor-General as defined in section 136 of the Act are paid and credited and from which all disbursements by or on behalf of Government are made."

Therefore, the use of the word " Consolidated Fund " is merely a change in nomenclature because that word is already used as an equivalent of the Public Account of the Central Government.

There is also an important idea behind this notion of a Consolidated Fund.

This notion of a Consolidated Fund, as Members might know, arose in England some time about 1777. The object why the Consolidated Fund was created in England was this. Originally Parliament voted taxes to the King, leaving the King to collect and spend it on such purposes as he liked. Oftentimes, the King spent the money for purposes quite different from the purposes for which he had asked it. Parliament could have no control after having voted the taxes. At a later stage. Parliament followed another procedure, namely, to levy a tax and to appropriate the proceeds of that tax for a certain purpose, with the result that when they came to passing the budget, there was practically no money left, all the taxes having been appropriated to specific purposes. Nothing was left for the general purposes of the budget. In order to avoid his squandering of money, so to say, by appropriation of individual taxes for particular purposes, it was necessary to see that all revenues raised by taxes or received in other ways were, without being appropriated to any particular purpose, collected together into the one fund so that Parliament when it comes to decide upon the Budget has with it a fund which it could disburse. In other words, a Consolidated Fund is a necessary thing in order to prevent the proceeds of taxes being frit3tered away by laws made by Parliament in individual purposes without regard to the general necessity of the people at all. I therefore submit that the House will have no difficulty in accepting the provision for a Consolidated Fund because it is a very necessary thing. If I may say so, there is no Constitution which does not provide for a Consolidated Fund. If you compare the constitution of Australia, Canada, South Africa or Ireland, or any Constitution, you will find that they all have a provision which says that all funds raised by taxes or otherwise shall be pooled together in a Consolidated Fund. We are therefore not making any departure at all.

Then, the other provision which we seek to make is to provide for an Appropriation Act in the place of a certified Schedule by the President. Honourable Members, if they refer to article 94 of the Draft Constitution, will see what the present procedure is. First of all, what happens is this: the President, that is to say, the Government of the day is required by article 92 to present a Financial Statement to Parliament in a certain form, which form is laid down in sub-clause (2) of article 94, dividing the expenditure into two categories, one category containing the expenditure charged upon the revenues of India and the other category of expenditure not charged upon the revenues of India, that is to say, upon the Consolidated Fund. After that is presented, then comes the next stage which is provided for in article 93. Under article 93 what happens is this: Parliament proceeds to discuss the Financial Statement submitted to it, head by head, sub-head by sub-head,

item by item and either agrees with the provisions made as to the amount by the executive or reduces it. This tiling is done by resolutions passed by the House on any cut motion. After that is done, under the present procedure, the provisions of article 94 apply, namely, that the President then certifies what the Assembly has done in the matter of making provision for the various heads of expenditure placed before it by Parliament. The new provision is that the procedure regarding certification by the President should be replaced by a proper Appropriation Act, passed by the legislature.

The argument in favour of substituting the procedure for an Appropriation Bill for the provisions contained in article 94 of the Draft Constitution is this. The legislature votes the supplies. It is, therefore, proper that the legislature should pass what it has done in the form of an Act. Why should the work done by the legislature in the matter of voting supplies be left to the President to be certified by an executive act, so to say ? That is the principal point that we have to consider. In the matter of Finance, Parliament is supreme, because, no expenditure can be incurred unless it has been sanctioned by Parliament under the provisions of article 93. If Parliament has sanctioned any particular expenditure on any particular head, then the proper authority to certify what it has done with regard to expenditure on any particular head is the Parliament and not the President. Therefore, the procedure of an Appropriation Act is substituted for the procedure contained in article 94 of this Draft Constitution.

I may also mention that article 94 was appropriate under the Government of India Act of 1935 for .the simple reason that the Governor-General had a right to certify what expenditure was necessary for him for discharging his functions which were in his discretion and in his individual judgement. The expenditure which the Governor-General wanted to incur in respect of functions which were in his discretion and in his judgement were outside the purview and outside the power of Parliament. He was entitled to change the amount, to alter that, to add to them. It was consequently necessary that the Governor-General should be the ultimate authority for certification because he had independent power of making such budget provision as he wanted to make in order to discharge his special functions. Under our new Constitution the President has no functions at all either in his discretion or in his individual judgement. He has therefore no part to play in the assignment of sums for expenditure for certain services. That being so, the certification procedure is entirely out of place under the new Constitution. I might also say that the appropriation procedure is a procedure which is employed in all Parliamentary Governments in Canada, Australia, South Africa and in Cereal Britain. I might also mention that, when this matter was discussed in 1935 when the Government of India Act was on the anvil, the proposal was made by the

Secretary of State himself that the authentication of the expenditure sanctioned by the Assembly would be done by an Appropriation Act and not by certification, but the Government of India of the day did not like the idea of an Appropriation Bill for the reason that the Governor-General had power to fix certain amounts in the budget in order to provide for the discharge of his own functions. Otherwise the Secretary of State himself as I said, was in favour of this proposal but his proposal was turned down by the Government of India in 1935. But my submission is this, that there is no necessity now for retaining this function which really gives the executive the authority to fix the amount and also to spend the money. I think it would be desirable to bring our procedure in line with the procedure that is prevailing in all countries where Parliament is supreme in the matter of sanctioning money for expenditure.

The other provision which is new which we have inserted is what is called vote on account. Now, it is necessary perhaps to explain why we have introduced it. For that purpose I should again like the House to refer to article 93 as it stands. Under article 93 no money can be issued or spent for any services unless the whole of the detailed budget is passed by Parliament. If you read article 93, that is the effect of it. The budget has *to* be presented under heads, sub-heads and items. Parliament has to pass that budget with regard to head, sub-heads and items. That is what is called passing the budget. Now, as you all know the budget is an enormous thing involving expenditure of something like 250 crores distributed on various items. If the provision of article 93 is to remain intact *viz..,* no money is to be spent unless all the details are passed by Parliament and if you also have I he provision that the budget must be passed before the end of the official year is over, then you must have a very limited time fixed for the discussion of the budget because under the provisions Of article 93 you cannot spend any money unless the budget had been passed in all its details. Either, as I said, you give up your right to discuss the budget in full or you make a change in article 93, or you may make another provision making an exception to article 93. The vote on account procedure which we propose to introduce by .an amendment provides for Parliament allowing a lump sum grant to the executive to be spent upon the services of the year for say about two months or so, so that the two months time will be available to Parliament to discuss in a much greater length—1 don't say fully—the budget provisions and the financial provisions of the Government. Unless, therefore, you have a provision for a vote on account *i.e.,* lump sum grant given to executive to cover an expenditure for about two or three months, that may be decided by some agreement between the Government and the Leader of the Opposition—unless you make a provision for a vote on account you will not get time to

discuss the budget at any greater length than what you have now. The House will remember that last time there was a great deal of feeling in the House that the Budget was rushed through, people had not more than seven or eight days given to them for the discussion of the different items and that the guillotine was applied. If the House therefore desires that it should have more time to discuss the details of the budget, to discuss the details of the financial provision, then some provision has got to be made in the Constitution whereby it will be open to the House to allow the executive to have a lump sum out of the Consolidated Fund, covering an expenditure of two months if the House wants two months for discussion. Since the provisions of article 93 are very stringent in the sense that no money can be spent unless the whole of the budget in all its details is passed we have got to make an exception to the provisions contained in article 93. Those exceptions are made by a provision which is called ' Provision for Votes on account '. These are, if I may say so, the three main changes (hat we have made in the Draft Constitution, Sir, with these words I move the amendments I have tabled.

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Shri B. Das : ...I again feel happy that these articles, as now going . to be amended, will be fool-proof and the Ministers will not play truant and will not be extravagant in expenditure. I again congratulate Dr. Ambedkar over it.

The Honourable Rev. J. J. M. Nichols-Roy (Assam : General) : Sir, before I speak, I would like to ask **Dr.** Ambedkar some clarification of certain points. Does this amendment force the Government of India to have a *fund* which is to be called a Consolidated Fund ? Or is it an enabling amendment ?

The Honourable Dr. B. R. Ambedkar: It is already there. It is only a change of name.

The Honourable Rev. J. J. M. Nichols-Roy : Then there must be an Appropriation Act passed in a Legislature and that must be passed in the same session ?

The Honourable Dr. B. R. Ambedkar: Yes.

The Honourable Rev. J. J. M. Nichols-Roy : That will take time no doubt. Sir, in view of this I would make a few remarks. There has been a good deal of criticism regarding the expenditure of money and waste of money by the Ministers of the Government of India or it might be by the Governments of the Provinces. I suppose the principles in this article 90 will apply to the provincial Governments also-—the same principles are in article 174.

The Honourable Dr. B. R. Ambedkar: Yes.

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The Honourable Rev. J. J. M. Nichols-Roy : ...I want to ask Dr. Ambedkar whether that is the position or whether every province will be forced to pass an Appropriation Act in order to appropriate money for expenditure.

The Honourable Dr. B. R. Ambedkar : The Appropriation Act will be compulsory, but the Vote on Account is optional for each Ministry. If any Ministry wants money on Vote on Account, it may ask the Legislature.

The Honourable Rev. J. J. M. Nichols-Roy : Suppose the Ministry in Assam or in any Province wants to follow the same procedure that we are having now, with the certificate of the Governor, will it be open to it to do so ?

The Honourable Dr. B. R. Ambedkar : There is no certificate at all of the Governor now.

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The Honourable Dr. B. R. Ambedkar : I do not think I can add anything usefully to what Mr. T. T. Krishnamachari has said. I should reserve my observations for the various amendments which will come up as I have no doubt the same arguments will be put forth.

[Amendments by Dr. Ambedkar mentioned earlier were adopted, others were rejected. Article 90, as amended, was added to the Constitution.]

Contents PART III